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GOVERNMENT PROPOSALS FOR IMPROVING THE MAINTENANCE OF CHILDREN

1. On 29 October 1990, the Government published a White Paper "Children Come First"¹ jointly presented by the Lord Chancellor, the Secretary of State for Scotland, the Secretary of State for Social Security, the Secretary of State for Northern Ireland, and the Lord Advocate. It contained proposals for the introduction of a new approach to the assessment and collection of child maintenance, and for the establishment of a new, effective and purpose built Child Support Agency for Great Britain, with a separate but corresponding Agency in Northern Ireland. These proposals were given effect by the Child Support Act², which received Royal Assent on 25 July 1991.

Purpose of the Consultation

2. The Child Support Act provides the framework for the new system of maintenance for children. The Government undertook to consult widely on the contents of the consequent regulations supplying fuller details of the scheme. This consultation document describes the Government's view of how the new system will work in practice. The consultation exercise is in fulfilment of the pledge to consult, and is in addition to earlier and continuing consultation the Department of Social Security has been having with, for example, representatives of employers' organisations, banking organisations, the Local Authority Associations, and the Council on Tribunals, about those proposals which specifically affect them. In addition to regulations following the Child Support Act, Rules of Court will be needed by magistrates' and the sheriff courts, and the higher courts. Draft rules will be produced in due course and consultation will proceed through the usual mechanisms. Any relevant comments received during this exercise will be forwarded to the appropriate rule making body.
3. The document sets out the Government's intentions about the content and effect of the regulations and the way in which these will operate. The Government has reflected upon all the points expressed so far, and this document sets out its considered view. The Government will consider all comments very carefully before the regulations are finally drafted, and laid before Parliament next year.

¹ *Children Come First (1990) HMSO Cm 1264, price £13.50 (2 volumes)*

² *Child Support Act 1991, Chapter 48, HMSO, price £7.15*

4. Comments are invited from interested organisations and individuals to help ensure that the objectives of a more efficient and effective system are achieved. Responses should be sent, to arrive no later than 16 December, to

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Department of Social Security
Room 2426
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Millbank Tower
21-24 Millbank
London SW1P 4QU

Key objectives of the policy

5. The objectives of the Government's policy on child maintenance are, that:
- * both parents should meet their legal, moral and financial responsibilities for their children whenever they are able to do so;
 - * the new system should be efficient and effective, and deliver consistent results;
 - * the system should be fair: to all children, whether from a first or subsequent family; to both parents; and to the taxpayer ;
 - * the level of the payments should be reviewed regularly;
 - * incentives to work should be retained and improved;
 - * decisions should have regard to the welfare of any child affected by the decision.

Key features of the new system

- 6.
- * The amount of child maintenance due to be paid will be worked out according to a formula which will produce predictable results combined with sufficient flexibility to take account of widely varying circumstances.
 - * A Child Support Agency will be created which will be responsible for tracing absent parents and for assessing, reviewing, collecting and enforcing maintenance payments. It will also provide information and advice, and will start operating from Spring 1993.
 - * The Agency will provide services to all families for whom maintenance is an issue. Its services will be free to parents with care

receiving Income Support, Family Credit or Disability Working Allowance. Other parents may be liable for a fee for use of the Agency's services. When the Agency is fully established the courts will lose most of their current responsibilities for child maintenance. However, the courts will retain responsibility for deciding with whom a child should live and issues related to contact with a child, support of a former spouse, property issues and disputed paternity; and for the reciprocal enforcement of maintenance where either the absent parent or the person with care lives abroad.

- * A parent with care who is claiming Income Support, Family Credit, or Disability Working Allowance will normally be required to make an application for maintenance of the child to the Agency and use its collection and enforcement services, unless good cause for not doing so can be shown. There will be no such requirement where the attempt to claim maintenance would result in harm or undue distress to the parent with care or the children living with him or her. Where there are no such circumstances and good cause is not shown, the payment of Income Support, Family Credit, or Disability Working Allowance will be reduced - but only after full and careful consideration of the reasons by specially trained staff. There will be rights of review and appeal.
- * When the Agency makes an assessment any of the people affected by that assessment will be able to seek a review of, or to appeal against, decisions affecting maintenance payments calculated under these new arrangements. There will be an efficient way of handling applications for internal review and a tribunal-based appeals system.
- * Absent parents receiving Income Support have the same obligations to maintain their children as other parents; they will be expected to make some contribution towards their children's maintenance. This will not apply, however, to absent parents who are sick or disabled or have children in their households (This will be dealt with by amendments to social security legislation and is not discussed further in this document).
- * The White Paper also sets out proposals for further help from Social Security for parents who want to go to work. Changes in the rules for the in-work benefits, - Family Credit, Disability Working Allowance, Housing Benefit and Community Charge Benefit, - will make it easier for them to do so. The first £15 of maintenance paid will be ignored when calculating the income of persons with care who receive those benefits. Furthermore, people with children will be able to apply for Family Credit when they work 16 hours or more per week instead of

24 hours or more at present. This will enable people to move from Income Support and to benefit from the fact that the first £15 of maintenance will be disregarded. These measures will be introduced from April 1992 and are being provided for by social security regulations. They are not considered further in this document.

The Child Support Agency

7. The Agency's creation is designed to ensure that, in the great majority of cases, a single organisation is responsible for all aspects of child maintenance. It is estimated that, when fully up and running, the Agency will have some two million customers and will make around three million assessments every year.
8. As maintenance assessments will be calculated according to precise rules, which will be laid down in the regulations this document describes, it will be possible to do them administratively. The creation of the Child Support Agency as a specialist organisation to carry out assessments and collect and enforce child maintenance payments will relieve the courts of this work, and so free them to concentrate on their primary task of resolving disputes relating to other matters where a judicial determination is required. In addition to its assessment work, the Child Support Agency will also have some new functions which have not traditionally been done by the courts: for example, tracing absent parents, conducting automatic annual reviews. It will offer advice and information and about its work and eventually, it will also collect other forms of child maintenance and any connected spousal maintenance.
9. The Child Support Agency in Great Britain will be accountable to the Secretary of State for Social Security. About 2,500 posts are already allocated to maintenance recovery work within DSS, and that the Child Support Agency will be able to build on this foundation of experience and expertise. It will employ some 4,700 staff in all, specially trained to deal with all aspects of child maintenance. In carrying out their functions of assessing amounts of maintenance to be paid, Child Support Officers will be statutorily independent of the Secretary of State.
10. Much of the assessment work, and associated record-keeping, will be computerised. The Agency will be able to provide an efficient, centralised service, with much of its contact with its customers being by post or by the telephone. Customers will be able to visit an office in their area if they wish. Staff will be located throughout the country in the extensive local office network of the Department of Social Security to provide a face-to-face service for conducting interviews and offering advice.

CHILD SUPPORT ACT 1991

A summary of the provisions of the Child Support Act is given below. It identifies the appropriate parts or paragraphs of this document in relation to the Sections of the Act which contain the relevant regulation making power.

SECTION	DESCRIPTION	RELEVANT PART OF CONSULTATION DOCUMENT
SECTIONS 1 TO 7	THE DUTY TO MAINTAIN AND THE BASIC PRINCIPLES	
<u>Section 1</u>	describes the duty imposed on parents to maintain their children for the purposes of the Act.	No regulation making powers
<u>Section 2</u>	imposes a duty on officials of the Child Support Agency ³ to take account of the interests of the child.	No regulation making powers
<u>Section 3</u>	defines key terms used throughout the Act: "qualifying child", "absent parent", "person with care" and "child support maintenance".	Appendix A: Glossary Part 8.7
<u>Section 4</u>	allows for the use of the services of the Child Support Agency on a voluntary basis. People may still reach a wholly private agreement or they may use the services of the Child Support Agency either just to assess what the maintenance due under the formula would be, or to collect and enforce it as well.	Part 2.2 Part 4.2 Appendix A: Glossary

³ The Act does not refer to the Child Support Agency. The Child Support Agency will be staffed by independent Child Support Officers and by officials acting on behalf of Secretary of State. For the purposes of this document, the duties and obligations imposed on both Child Support Officers and Secretary of State Officials are described as being imposed on the Agency. Throughout this document the Secretary of State means the Secretary of State for Social Security.



<u>Section 5</u>	prevents more than one assessment of maintenance being made with respect to a child.	Paragraph 2.3.3
<u>Section 6</u>	obliges parents with care who are receiving Income Support or Family Credit (or other prescribed benefits, that is, Disability Working Allowance) to authorise the Child Support Agency to take action to recover maintenance from absent parents.	Part 2.2 Part 4.2 Part 5 Appendix 6: Glossary
<u>Section 7</u>	applies only in Scotland. It enables a qualifying child aged 12 or over, where no application has been made by a carer, to apply on his or her own behalf for the same facilities as in Section 4. This preserves the established statutory right in Scots law (section 2(4)(a) of the Family Law (Scotland) Act 1985) under which a child may bring an action in court for aliment (maintenance) on his or her own behalf.	Part 2.2 Part 4.2 Appendix 6: Glossary
<u>SECTION 8 TO 10</u>	THE ROLE OF THE COURTS These sections concern the continuing role of the courts in dealing with child maintenance and private agreements for maintenance under the new scheme.	

<u>Section 8</u>	defines the circumstances in which the courts can make orders under their existing powers for the maintenance of children. It provides in effect that, where maintenance may be sought through the Child Support Agency, except in the defined circumstances, the courts may not make orders for periodical maintenance payments for children. <u>Section 8</u> also provides for the retention of existing court powers to cover maintenance for children not covered by the new scheme. For example, a) 17 year old children who are no longer still at school. b) Step-children: at present, a step-child who has been treated as a child of the family may seek maintenance from a step-parent. In deciding whether to make an award, the court is required to consider, among other matters, the nature and length of the relationship and whether there is any other person with liability to maintain the child.	Part 8
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	and also covers certain elements of maintenance:- c) the courts will be able, on a discretionary basis, to award maintenance over and above the maintenance assessment where the parents can afford to pay; d) the courts will be able to make an order, in addition to the normal maintenance assessment, for education costs, which are not covered by the formula; and e) since the maintenance formula assessment will not include any <u>special</u> allowances for a child's disability, additional maintenance for the extra costs of caring for a disabled child can be awarded by the courts	
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<u>Section 9</u>	deals with cases where there is a maintenance agreement between the parties which provides for periodical payments of maintenance for a child. The existence of such an agreement will not prevent either party seeking an assessment under the Act. Similarly, the court will not be able to vary an existing agreement to include a new child maintenance provision or increase an existing one against an absent parent where the issue falls within the jurisdiction of a child support officer.	No regulation making powers
<u>Section 10</u>	deals with the relationship between maintenance assessments and certain court orders or maintenance agreements relating to the same qualifying children.	Part 8
SECTIONS 11 & 12 & SCHEDULE 1	ASSESSMENTS AND THE FORMULA	

	These sections, and the related schedule, provide for the making of assessments under the formula, for interim maintenance assessments and for various procedural matters to do with assessments. The Schedule sets out the key elements of the formula for calculating maintenance: - THE MAINTENANCE REQUIREMENT - EXEMPT INCOME - THE DEDUCTION RATE - PROTECTED LEVEL OF INCOME	Part 1 Part 2.7 Part 2 Paragraph 1.1.4 Paragraph 1.1.19 Paragraph 1.1.27 Paragraph 1.1.31
SECTION 13	CHILD SUPPORT OFFICERS	
<u>Section 13</u>	provides for the appointment of Child Support Officers. Their function will be to carry out maintenance assessments, and in so doing they will be statutorily independent of the Secretary of State and the Chief Executive of the Child Support Agency. A Chief Child Support Officer will advise Child Support Officers about their duties and will monitor and report on the standards of their performance.	No regulation making powers
SECTIONS 14, 15 & 50 & SCHEDULE 2	INFORMATION	

	These sections and the related schedule provide for the means by which the Child Support Agency will have access to the information it needs to carry out its responsibilities and functions. They also ensure that disclosure of information only takes place in very specific circumstances.	Part 4
<u>Section 15</u>	allows for the appointment of inspectors in order to obtain information when other methods have failed.	No regulation making powers
SECTIONS 16 TO 25 & SCHEDULES 3 & 4	REVIEWS AND APPEALS	
	These sections set out the system through which assessments made by Child Support Officers can be reviewed and appealed against. All assessments will be reviewed at regular intervals to take account of changes in the parents' circumstances and the Income Support rates on which the maintenance requirement is based. They can also be reviewed between periodic reviews when the circumstances of the parties change significantly.	Part 2 (Review Procedures) Part 3 (Appeal Procedures) Appendix A: Glossary (Definitions of Section 16, 17, 18 and 19 Reviews)

	Where any of the parties thinks an assessment is wrong, they will be able to ask for it to be reviewed by a Child Support Officer as a means of putting the matter right quickly. If this does not resolve the issue satisfactorily there will then also be a right of appeal to a Child Support Appeal Tribunal. From there, further appeals will be possible, on questions of law, to Child Support Commissioners, and then to the Court of Appeal or the Court of Session in Scotland.	
SECTION 26 TO 28	DISPUTES ABOUT PARENTAGE	
<u>Sections 26 to 28</u>	These sections make provision for cases where parentage is disputed. The basic principle is that, in such cases, it is for a court to make a finding. Decisions will not be made administratively by a Child Support Officer and the Child Support Agency can take no further action about maintenance until the question of paternity has been resolved.	No regulation making powers
SECTION 29 TO 41	COLLECTION AND ENFORCEMENT	
	These sections detail the Child Support Agency's powers to collect maintenance, pay it to the person with care, and take enforcement action when payment is not made. These powers draw on existing powers for collecting and enforcing maintenance liabilities.	Part 6

SECTION 42	SPECIAL CASES	
	The formula is designed to cover a wide range of circumstances. There will, however, be particular circumstances to which it cannot be applied in the standard way. Section 42 gives some examples, such as where a child has his home in more than one household, or where both parents of a child are absent (for example, the child lives with another relative such as a grandparent) and permits the formula to be modified to reflect these circumstances.	Part 1 (paragraphs 1.1.26 and 1.2 onwards)
SECTION 43	CONTRIBUTION TO MAINTENANCE BY DEDUCTION FROM BENEFIT	
Section 43	provides a power to make regulations so that, in certain cases, a deduction may be made from the absent parent's Income Support as a contribution towards child maintenance.	Introduction (paragraph 6(f))
SECTION 44 TO 45	JURISDICTION	
Section 44	provides that the Child Support Agency will only have jurisdiction where both parents and the child concerned are habitually resident in the United Kingdom.	Part 8

<u>Section 45</u>	allows the Lord Chancellor and the Lord Advocate to provide for appeals, or specified classes of appeals, to be heard not by a tribunal but by a court.	No intention to use at present
SECTION 46	FAILURE TO COMPLY WITH SECTION 6	
<u>Section 46</u>	sets out the procedure to be followed when a parent with care to whom or for whom benefit is paid has refused to give either authorisation or information to the Secretary of State to enable him to obtain child maintenance for the children. It provides for a reduction of the benefit of the parent with care if there is no good cause for such a refusal.	Part 5
SECTION 47	FEES	
	This section permits the charging of fees for use of the services of the Agency.	Part 7
SECTION 48 & 49	RIGHTS OF AUDIENCE	
	These sections allow officers of the Child Support Agency to conduct enforcement proceedings in magistrates' courts in England and Wales, and in Scotland, for lay representation in proceedings under the Act in Sheriff Courts.	No regulation making powers
SECTION 50	SEE SECTION 14	Paragraphs 4.3.5 and 4.3.6
SECTION 51 TO 58	SUPPLEMENTAL	
	The remaining sections in the Act chiefly cover technical matters.	

<u>Section 51</u>	contains a range of supplementary powers to make regulations designed to cover a variety of points of detail to do with the making of assessments, adjusting assessments to recover over and under payments of maintenance, the serving of notice, the provision of evidence, and the rounding up or down of calculations done under the Act.	Parts 1 and 2
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<u>Section 52</u>	makes further provision for regulations under the Act. In particular, it lists those regulations which are to be subject to affirmative procedure (and will therefore need to be formally approved by resolution of both Houses of Parliament). These will include all regulations to do with major matters such as: * the detail of the formula, including special provisions for special cases; * the calculation of assessments * the rules about interim assessments; * the circumstances in which an obligation on a parent with care to supply information does not apply; * the retention of arrears by the Secretary of State and the charging of interest on arrears * the making of a contribution to maintenance by an absent parent on benefit; and * the charging of fees for the Child Support Agency's services.	Part 1 Part 1 Part 2.7 Part 5 Part 6 Introduction (paragraph 6(f)) Part 7
<u>Section 53</u>	is a standard financial provision.	No regulation making powers

<u>Section 54</u>	defines some of the terms frequently used in the Act.	See also Appendix A: Glossary
<u>Section 55</u>	contains the definition of a child for the purposes of the Act.	Part 8.8
<u>Section 56</u>	as outlined in the White Paper, the system of child support maintenance is to have effect throughout the United Kingdom. The main provisions of the Act apply to Great Britain, with specific provision for Scotland to reflect the separate legal system in Scotland. Some of the sections also apply to Northern Ireland and <u>Section 56</u> allows the Act to be extended to cover Northern Ireland by Order in Council.	Order in Council is the usual procedure for extending legislation in Great Britain to Northern Ireland where the purpose is identical. The unitary system will be achieved by way of a Memorandum of Reciprocal Arrangements between Great Britain and Northern Ireland. Regulations giving effect to the Memorandum will be made, for Great Britain, under Section 56(3) of the Child Support Act and, for Northern Ireland, under corresponding provisions there.
<u>Section 57</u>	deals with the application of certain provisions of the Act to Crown servants and Crown property.	Paragraph 6.3.11
<u>Section 58</u>	provides for short title, commencement and extent. It introduces <u>Schedule 5</u> , which makes minor amendments to existing legislation.	

PART ONE: THE FORMULA

1.1 THE FORMULA FOR CALCULATING A MAINTENANCE ASSESSMENT

1.1.1 There will be a standard way of calculating the amount of maintenance needed for the support of the child or children covered by an application. The ability of both parents to provide that support will be calculated by looking at the income available to them after they have met their own day to day expenditure. The allowances used in the formula will be based on the amounts of allowances and premiums in Income Support.

1.1.2 Part 1 of Schedule 1 to the Child Support Act 1991 sets out the framework for the calculation, making use of algebraic formulae to explain the basic principles.

These involve:

- the maintenance requirement - representing the basic day to day costs of supporting the children
- assessable income - the income available to each parent after allowances for day to day expenditure (their exempt income) have been offset against their net income (paragraph 1.1.8)
- the deduction rate - which sets the proportion of assessable income to be used for the maintenance of the children
- additional element - where the total assessable income means that the parents can afford to provide more than the maintenance requirement, they will be expected to continue to pay up to a maximum amount. A lower deduction rate will be used for this extra maintenance. The maximum will be defined as an additional amount per child
- a protected level of income - this protects the basic income of an absent parent who is expected to pay maintenance under the formula. It will ensure that the payment of maintenance will not take his or her income, or that of their second family, below an amount (calculated by reference to Income Support rates) sufficient to meet the day to day needs of their family
- a minimum amount - absent parents will normally be expected to pay at least a minimum amount of maintenance for their children but there will be some exceptions.

Rounding

Where any calculation in the maintenance assessment produces a fraction of a penny this will be rounded to the nearest penny. Amounts of less than 0.5

pence will be rounded down and amounts of 0.5 pence or more will be rounded up.

- 1.1.3 Part 1 of Schedule 1 to the Act also provides a number of regulation making powers to set out the detailed arrangements for all these aspects of the formula. This Part of the consultation document explains the Government's proposals for these regulations.

Worked examples of the formula, using current amounts of Income Support rates and allowances are provided as an Appendix to this Part (pages 57-71). Section 42 of the Child Support Act provides for some cases to be treated as special cases and for arrangements for them to be modified. Paragraph 1.2 onwards explains how the formula will be modified to meet their special circumstances.

All calculations for a maintenance assessment will be based as far as possible on amounts and circumstances that apply at the effective date (described in Part Two of this document) for the maintenance assessment that is being made.

THE MAINTENANCE REQUIREMENT

- 1.1.4 This is the amount needed to provide for the day to day needs of the child or children for whom the maintenance assessment is being made. It will be calculated as follows:

- a) for each child the amount of the Income Support personal allowance for a child of the same age

PLUS

- b) the amount of the Income Support family premium

PLUS

- c) where at least 1 child is under 11 years of age, the amount of the adult Income Support personal allowance for a person aged 25 years or over (paragraph 1.1.15 below explains what happens where all the children are aged 11+)

PLUS

- d) where the person with care has no partner, the amount of the Income Support lone parent premium

- 1.1.5 The adult allowance represents the care needed by the child. If none of the children is aged under 11 but there is a child aged 11-15, the amount allowed under 1.1.4(c) will be 85 per cent of the amount of the Income Support personal allowance for an adult aged at least 25 years. When the child or all the children for whom a maintenance assessment are being made are aged 16 and over, nothing is to be included at 1.1.4(c). These adjustments recognise that as children become older the need for continuous supervision reduces.

- 1.1.6 The amount of Child Benefit that is or would be payable for the children covered by the maintenance assessment will be deducted from the total of the allowances listed in paragraph 1.1.4. One Parent Benefit will not be deducted. The amount to be deducted for the eldest, elder or only child will be:

£9.25 (October 1991 rates)

and for all other children:

£7.50 (October 1991 rates).

Example

This shows how the maintenance requirement will be calculated for a lone parent family with 2 children aged 9 and 12. The maintenance requirement will be as follows:

	<i>October 1991 rates £ per week</i>
<i>Child Allowances</i>	<i>£33.60 (£13.60 for a child aged under 11 and £20.00 for a child aged 12)</i>
<i>Family Premium</i>	<i>£ 8.70</i>
<i>Lone Parent Premium</i>	<i>£4.45</i>
<i>Adult Allowance</i>	<i>£39.65</i>
<i>Subtotal</i>	<i>£86.40</i>
<i>LESS Child Benefit</i>	<i>£16.75 (£9.25 for first child and £7.50 for second child)</i>
<i>TOTAL MAINTENANCE REQUIREMENT</i>	<i>£69.65 per week</i>

The next step then is to look at the income and essential expenditure levels of both parents to see how much each of them will be expected to pay towards the maintenance requirement. Each parent's assessable income will be calculated.

ASSESSABLE INCOME

- 1.1.7 Assessable income is the income available to each parent after allowance against their net income for day to day expenditure. It will be calculated in the same way for both parents. Net income will comprise all the sources of income available to the parent calculated as set out in paragraphs 1.1.8 to 1.1.18. Day to day expenditure will then be calculated as in paragraphs 1.1.19 to 1.1.25 to arrive at the total of exempt income. Exempt income will be deducted from net income to leave assessable income.

NET INCOME

- 1.1.8 This will comprise the total of income from all sources available to the absent parent, or parent with care, for example:

Earnings from employment after deduction for tax, National Insurance contributions, and fifty per cent of any contribution to an occupational or personal pension scheme (see paragraph 1.1.10 below);

Earnings from self-employment net of tax, National Insurance contribution; and fifty per cent of contributions to a personal pension scheme (see paragraph 1.1.11 below);

Income from benefits (but see paragraph 1.1.16 below);

Income from capital (for example, interest on bank/building society accounts, income from trusts/property etc);

Student grants/loans (but see paragraph 1.1.17 below), training allowances (but see paragraph 1.1.17 below);

Income from occupational or personal pension schemes;

Income from boarders/subletting/rents.

Calculation of weekly income

- 1.1.9 A standardised level of income for the week immediately before the effective date (see paragraph 2.6) will be used where possible. Each item will be considered and an average calculated where there are fluctuations. Income will be counted in the week it is due to be paid. Income paid by calendar months will be converted to weekly equivalents by multiplying by 12 and dividing by 52 eg net monthly pay £1,085, weekly equivalent = $\text{£}1,085 \times \frac{12}{52} = \text{£}250.38$.

If income equivalent to several weeks' income is paid together, for example, holiday pay and payments in lieu of notice with final pay, it will be treated as applying for the equivalent number of weeks over the period following

payment of the income.

Any income received which is not paid for an identifiable period will be treated as available for a year and converted to a weekly amount by dividing by 52.

Calculation of earnings from employment

- 1.1.10 The calculation of this standardised income level will be based on information from the previous 2 months (monthly paid employees) or 5 weeks (weekly paid employees) or such period as is reasonable for people with fluctuating earnings or earnings paid at other intervals. Any payments of bonus, commission, or gratuities etc for that period will be counted. Payments for expenses will be ignored (provided they are wholly, exclusively and necessarily incurred in carrying out the employment).

Example

This example shows the calculation of net earnings for a weekly paid person who is married. The variations reflect overtime payments and a pay increase. There is also a contribution to an occupational pension of 6% of earnings.

Week	Gross per Week	Tax	National Insurance	Half Pension Contribution	Net per Week
£ pw	£ pw	£ pw	£ pw	£ pw	£ pw
Week 1	250.00	34.64	14.90	7.50	192.96
Week 2	250.00	34.64	14.90	7.50	192.96
Week 3	270.00	39.34	16.30	8.10	206.26
Week 4	260.00	36.99	15.60	7.80	199.61
Week 5	290.00	44.04	17.70	8.70	219.56
Average of 5 weeks	264.00	37.93	15.88	7.92	202.27

Net amount of earnings to be taken into the maintenance calculation is £202.27

Calculation of income from self employment

- 1.1.11 The calculation of earnings for the self employed is intended to reflect the flow of cash through the business and the money available to the absent parent or parent with care for the payment of maintenance. The calculation will reflect the difference between the earnings from the employment (the gross receipts) and expenses wholly, exclusively and necessarily incurred in the

running of the business. The assessment period will either be a year or such other period as will provide a more reliable calculation.

Example

Calculation of net earnings for a self-employed market trader who is married. The expenses allowed are incurred wholly and exclusively in the running of the business. He is also purchasing a personal pension at £40 a calendar month.

Period of assessment 1 year (365 days)

£ Gross Receipts		£ Allowable Expenses	
<i>Sales</i>	26,400	<i>Purchases</i>	12,820
		<i>Rent</i>	1,910
		<i>Accountancy Costs</i>	223
		<i>Vehicle Expenses</i>	578
		<i>Vehicle Fuel Costs</i>	1,086
<i>Gross Receipts</i>	26,400	<i>Insurance</i>	172
<i>Less Expenses</i>	17,351	<i>Loan interest only</i>	562
NET PROFIT	9,049	TOTAL	17,351

Conversion to weekly amount $9,049 \div 365 \times 7 = 173.54$

Less:

Tax (estimated at basic rate with married couple allowance) 19.29

National Insurance (Class 2 and Class 4 rates) 8.95

Personal Pension Contribution (Half of contribution to be offset against earnings) 4.62

Total Deductions 32.86

Net Weekly Earnings 140.68
=====

Partner's income

- 1.1.12 The income of any partner living with the parent will not be included in assessable income. (It will be necessary to consider later in the calculation, however, whether the partner has any income which allows him or her to contribute to the support of his or her own child.)

Children's income

- 1.1.13 Where the absent parent or parent with care has a child of his or her own living with him or her, income of the child may be included as if it were the parent's income. Income from a child's earnings will be ignored but other income, for example, from money left by a relative will be counted as follows:

- a) where the child is not the subject of the maintenance assessment - income will be counted up to the amount of the allowance(s) for the child included in exempt income (personal allowance and any premium in respect of disability - see paragraph 1.1.19 below). For a child under 11 the personal allowance is £13.60 a week and income up to this amount will be counted.
- b) where the child is the subject of the maintenance assessment in question, either:
 - i) the child's income will be counted in full if the child is the only child for whom the assessment is being made

or

- ii) if the child is one of several for whom the maintenance assessment is made - the child's income will be counted only to the extent of that child's share of the maintenance requirement and the maximum additional amount.

(See example on page 31)

- 1.1.14 Where there is a partner who is the other parent he or she may also be able to support their child. In that case it is only half the child's income that will be available to be treated as set out in paragraph 1.1.13(sub-paragraph (a)) above.

Example

Jennifer is divorced from Byron. They had two daughters Avril aged 12 and Sarah aged 14 who live with Jennifer who has now married Paul.

The maintenance requirement for Avril and Sarah is £65.65 per week.

Jennifer has an assessable income of £30 per week.

Byron has an assessable income of £208.90 per week.

The total assessable income is £238.90 per week.

The maintenance requirement is met when the parents have paid 50% of the first £131.30 of the total assessable income. There is assessable income of £238.90 - £131.30 available for extra maintenance = £107.60.

Jennifer's assessable income for the maintenance requirement is:

$$* \quad \frac{30}{238.90} \times 131.30 = 16.49$$

Jennifer pays 50% of this assessable income of £16.49 which is £8.25

Byron's assessable income for the maintenance requirement is:

$$* \quad \frac{208.90}{238.90} \times 131.30 = 114.81$$

Byron pays 50% of his assessable income of £114.81 which is £57.41

Jennifer is also able to pay £3.38 (25% of £30 - £16.49 the remaining assessable income). Jennifer's total payment is £8.25 + 3.38 = £11.63

Byron is also able to pay £23.52 (25% of £208.90 - £114.81 the remaining assessable income). Byron's total payment is £57.41 + 23.52 = £80.93

Total maintenance for Avril and Sarah is £11.63 + £80.93 = £92.56.

Sarah now has a net income of £40 per week from capital (left to her by her grandfather) that has been invested in a building society.

To work out how much of Sarah's income should be included as income the maximum amount of maintenance for Sarah that could be paid under the formula is calculated.

** See paragraph 1.1.29*

Maximum amount of maintenance that could be paid under the formula for Sarah:

<i>Personal Allowance</i>	<i>20.00</i>	<i>allowance for a child aged 11 to 15</i>
<i>Adult Allowance</i>	<i>16.85</i>	<i>half of Adult Allowance</i>
<i>Family Premium</i>	<i>4.35</i>	<i>half of family premium</i>
<i>Additional maintenance</i>	<i>86.10</i>	<i>3 x (£20.00 plus £8.70) child allowance plus family premium</i>
<i>Total</i>	<i>127.30</i>	

Sarah's income of £40 is less than the maximum amount for her and so it is added to Jennifer's assessable income. The new assessable income for Jennifer is £70. This changes the assessment as follows:

*Byron still has an assessable income of £208.90 per week.
So the total assessable income is now £278.90 per week.*

The maintenance requirement is met when they have both paid 50% of the first £131.30 of the total assessable income:

Jennifer's assessable income for the maintenance requirement is:

$$\begin{array}{r}
 70 \quad \times \quad 131.30 \quad = \quad 32.95 \\
 \hline
 278.90
 \end{array}$$

Jennifer pays 50% of £32.95 which is £16.48

Byron's assessable income for the maintenance requirement is:

$$\begin{array}{r}
 208.90 \quad \times \quad 131.30 \quad = \quad 98.35 \\
 \hline
 278.90
 \end{array}$$

Byron pays 50% of £98.35 which is £49.18

Jennifer is also able to pay £9.26 (25% of £70 - £32.95 the remaining assessable income).

Jennifer's new total payment is £16.48 + 9.26 = £25.73

Byron is also able to pay £27.64 (25% of £208.90 - £98.35 the remaining assessable income).

Byron's new total payment is £49.18 + 27.64 = £76.82

Total maintenance for Avril and Sarah is now £25.73 and £76.82 = £102.25.

Shared/joint income

- 1.1.15 In most cases it will be clear who owns a particular income. Where a source of income is held jointly then the value will be divided proportionately between the owners. Certain social security benefits contain extra amounts for a partner or child. For the purposes of this calculation the amount that is paid for a person is to be treated as that person's income.

Social Security benefits

- 1.1.16 When Income Support is received by or for a parent that parent's assessable income will be taken to be NIL. An absent parent will instead make a minimum contribution to maintenance by a deduction from benefit unless exempt (see paragraph 1.1.36). It will not therefore be necessary to calculate the actual amount.

It is not proposed to treat any other benefit in this way. However, Housing Benefit and Community Charge Benefit will not be counted in net income. Housing Benefit will be offset against housing costs in exempt or protected income and Community Charge Benefit will be offset against Community Charge in the calculation of protected income (see paragraphs 1.1.23 and 1.1.32).

Family Credit and Disability Working Allowance will be counted as the income of the person whose earnings they are supplementing. If two adults are earning, the benefit will be deemed to belong to the main earner (the person with largest net earnings).

Child Benefit will not be counted in net income (but see 1.1.6 for its treatment in the maintenance requirement).

Income from certain other benefits will also be ignored completely, for example:

Attendance Allowance
Disability Living Allowance
Social Fund Payments

(See Tables One and Two on pages 35 to 37)

Students and trainees on Youth Training (YT)

- 1.1.17 Unless they have income in addition to the various grants, loans and allowances currently available, students and young persons on YT will be assessed at the minimum amount of maintenance (if applicable).

Other forms of income which may be disregarded in full or in part

- 1.1.18 It is proposed to ignore completely income from a wide variety of other sources such as the Macfarlane Trusts, the Independent Living Fund, gallantry awards, certain concessionary payments and income frozen abroad. The proposed list of disregarded income is at Table One on page 35.

Certain other types of income (including benefits) will be partly ignored. The proposed list is at Table Two on page 37.

TABLE ONE:

INCOME TO BE FULLY DISREGARDED IN THE CALCULATION OF NET INCOME

Any payment from the

Macfarlane Trust

Macfarlane (Special Payments) Trust

Macfarlane (Special Payments)(No.2) Trust

Independent Living Fund

Attendance Allowance, Constant Attendance Allowance and any payment under any statutory scheme for attendance needs

Charitable or voluntary payments intended and used for items other than for day to day expenses

Child Benefit: except that it will be fully taken into account in protected income

Christmas bonus (under Social Security Act 1986)

Compensation for the loss of entitlement to housing benefit or housing benefit supplement

Compensation for the loss of entitlement to supplementary benefit

Concessionary payments to compensate for non payment of an income related benefit eg income support

Disability Living Allowance

Educational maintenance allowance

Exceptionally Severe Disablement Allowance - payable with Industrial Injuries Disablement Benefit

Gallantry awards

Income frozen abroad

Income in kind

Income Support

Income from capital - for a year where capital is from the sharing out of assets at divorce or separation and the intention is to use the capital to provide accommodation or for household items

Maintenance already being paid by the absent parent for a child for whom the maintenance assessment is being made

Mobility Allowance - any residual payments

Mobility Supplement or any payment to compensate for such a payment

NHS payments in respect of travelling costs or remission of charges

Non dependants contribution to accommodation costs

Payment from insurance policy for mortgage protection

Payment for a child boarded out with, or temporarily in care of, a person; or for the promotion of the welfare of children

Payment for a person temporarily in the care of another person and not normally resident in that person's household

Payment by employer of employee's expenses where wholly necessarily and exclusively incurred in doing the work

Payment of expenses to voluntary workers

Payments to visit people in custody

Resettlement benefit

Social fund payments

Students - payments in respect of certain expenses necessarily incurred as a result of attendance on a course

Training expenses for courses under the Employment and Training Act 1973 or Section 2 of the Enterprise and New Towns (Scotland) Act 1990.

War widows special payments

TABLE TWO:

TYPES OF INCOME TO BE PARTLY DISREGARDED IN THE CALCULATION OF NET INCOME

£10 Disregard

Charitable or voluntary payments - intended and used for day to day expenses

Students - covenant and/or loan income

War disablement pension

War widow's pension

Other Disregard

Adoption allowance - to the extent it exceeds allowances for child in exempt income

Annuity income - home income plans - disregard of an amount equal to interest on the loan

Custodianship payments - to the extent that they exceed either allowances for child in exempt income or the amount for the child in the maintenance requirement, whichever is relevant

Dependant's income - to the extent that it exceeds either allowances for child in exempt income or the amount for the child in the maintenance requirement, whichever is relevant

Income from boarders in the home (where this is not earnings from self-employment) - disregard of the first £20 of any payment received plus 50% of any excess

Income from rent or leasing property - not own home or self employed - disregard of amount of mortgage plus any standard community charge, any water and sewerage charges and ground rent liable to be paid

Income from subletting of part of home (where this is not earnings from self-employment) - disregard of £4 plus £8.05 if providing heating

Income in a currency other than sterling - disregard of the charge made for conversion to sterling

Maintenance for a child for whom maintenance assessment not being made - disregard of any amount above the level of personal allowance and any premium in respect of the child included in exempt income (see paragraph 1.1.19)

National insurance contributions - amount payable to be deducted from gross income

Tax on income - amount of tax payable to be deducted from gross income

EXEMPT INCOME

1.1.19 For each parent exempt income will represent the income which the parent keeps for his or her own personal expenses. It will also include allowances for any children of that parent living with him or her. It will not include allowances for a partner, stepchildren, other relatives or other persons living in the parent's family or household. Exempt income will include:

- a) the amount of the Income Support personal allowance for a person aged at least 25 years

PLUS

- b) **if the absent parent or parent with care would qualify for the inclusion of the Disability Premium if Income Support was claimed** the amount of the Income Support Disability Premium

PLUS

- c) **if the absent parent or parent with care has no partner and the amount of the Disability Premium is not included** the amount of the Income Support Lone Parent Premium (provided an allowance is made for a child under (e))

PLUS

- d) **if the absent parent or parent with care would qualify for inclusion of the Carer Premium if Income Support were claimed** the amount of the Income Support Carer Premium

PLUS

- e) **for any child of the absent parent or parent with care living with him or her,** the amount of the Income Support personal allowance that would be appropriate for a child of the same age (but see paragraph 1.1.20 below for the position when the child's other parent also lives in the family and can help support the child)

PLUS

- f) **if there are children of the absent parent or parent with care living with him** the amount of the Income Support Family Premium (but see paragraph 1.1.20 below for the position when the children's other parent also lives in the family and can help support them)

PLUS

- g) **if any of the children of the absent parent or parent with care living with him or her would qualify for the Disabled Child Premium if Income**

Support were claimed the amount of the Income Support Disabled Child Premium (but see paragraph 1.1.20 below for the position when the child's other parent also lives in the family and can help support them)

PLUS

- h) housing costs for the absent parent or parent with care and any children of his/hers (see paragraphs 1.1.22 to 1.1.26 below for a description of the way housing costs will be worked out)
- i) where the absent parent or parent with care is in a residential care (including residential care provided by a local authority) or nursing home - the amount of the fees

1.1.20 When an absent parent or parent with care has a child of their own living with them, there will always be an allowance for these children in exempt income. But if, say, the absent parent lives with a new partner and they have a child, the new partner may be able to contribute to the support of that child. If so, this will affect the amount of allowances for the child to be awarded in exempt income. When the other parent of any child of the parent whose exempt income is being assessed lives in the family and is able to help support the child, the amount to be included at (e) and (g) will be half of the standard amount. Normally the amount to be included at (f) will similarly be half of the standard amount. The exception to this is the situation where the amount of the Family Premium would be included because there is a child of the parent's who is not also a child of the partner's living with him/her.

1.1.21 The partner's ability to share the support of their child will be assessed by comparing the amount of his/her net income (paragraphs 1.1.8 to 1.1.18 above) with the amount of the Income Support personal allowance for someone aged at least 25 plus his/her share of the housing costs (ie the amount not allowed in the calculation of exempt income - see paragraphs 1.1.22 to 1.1.26 below)

Example

Calculation showing a partner's ability to support their child and the effect on exempt income.

Richard and Sheila have one child, Becky aged 2. Richard has a child from a previous relationship, Elspeth aged 9, who lives with her mother Trudy.

Richard earns £175 net per week.

Richard and Sheila are buying their own home and their housing costs are £50 per week. If Sheila has no income of her own, Richard's exempt income will be:

<i>Child Allowance: age 2</i>	<i>13.60</i>
<i>Personal Allowance</i>	<i>39.65</i>
<i>Family Premium</i>	<i>3.90</i>
<i>Housing Cost</i>	<i>39.58 (see 1.1.22-6 below)</i>
<i>Total Exempt Income</i>	<i>£101.53</i>

If Sheila also works with part-time earnings (net) of £60 a week the position would be as follows:

Sheila's net income £60 a week

Allowances for Sheila:

<i>Adult Allowance</i>	<i>39.65</i>
<i>Share of Housing Cost</i>	<i>10.42 (the housing costs not included in Richard's exempt income see paragraph 1.1.25)</i>
<i>TOTAL</i>	<i>£50.07</i>

Income exceeds allowances so Sheila is considered able to help towards the support of Becky.

Richard's exempt income will now be:

<i>Child Allowance: age 2</i>	<i>6.68</i>
<i>Personal Allowance</i>	<i>39.65</i>
<i>Family Premium</i>	<i>3.98</i>
<i>Housing Cost</i>	<i>35.42 (see 1.1.22-6 below)</i>
<i>Total Exempt Income</i>	<i>£85.73</i>

Housing Costs

1.1.22 Housing costs - most commonly rent or costs of house purchase (mortgage) - will be allowed for the dwelling which the parent normally occupies as his or her home. Similarly, costs will be allowed for shared ownership schemes, board and lodging and other costs eligible for:

- a) Housing Benefit - such as licences to occupy, mooring charges, site rents for mobile homes or caravans, and payments in respect of croft land.
- b) consideration under the Income Support scheme - such as payments under co-ownership schemes, ground rent relating to a long tenancy, payments made by Crown tenants and payments in respect of a tent and the site on which it stands.

Appropriate housing costs for certain other types of accommodation not normally coverable by either Income Support or Housing Benefit will also be allowed. These may include charges for foreign servicemen stationed in Great Britain, staff of embassies and high commissions and people living in accommodation provided by their employer (tied accommodation).

Community charge or charges made for fuel, water or sewerage services, or property maintenance will not count as housing costs.

Housing costs not already expressed in weekly amounts, will be recalculated as weekly sums like other elements in the calculations of exempt and protected income.

The definition of the parent's household will be the same as that used for Income Support purposes.

Rent

1.1.23 Exempt income will include provision for the net eligible rent appropriate to the parent and any children of his/hers living with him/her, and not the rent which applies to his/her whole household. Net eligible rent will be arrived at as follows:

- a) Payments for rent eligible for Housing Benefit, less any element for services or charges which would be ineligible for Housing Benefit, such as charges in respect of day to day living expenses. These can include meals, laundry, leisure items, cleaning, and transport.
- b) Crown tenants' net payments, less any water charges included in those payments.

- c) Eligible rent less any contribution towards that rent received via Housing Benefit.
- d) Deductions will also be made from eligible rent for each non-dependant in the household. A non-dependant will be defined as a person who normally lives with the parent other than a partner or dependant child of the parent's or of the parent's partner. The amounts to be deducted will be the same as those which would be made from housing costs if the parent were receiving Housing Benefit, and the rates will vary according to the circumstances of the non-dependant. Where the parent is a joint tenant, the deduction will be apportioned between the joint tenants.
- e) Where there is a joint tenancy with a person who is not a partner of the parent, the rent will be divided equally among the joint tenants.
- f) The amount left - net assessable rent - will be the full housing cost for the parent's household. The share included in exempt income will be the share apportioned to the parent and any natural children living with him or her. It will not include a share for his/her partner, any step-children or other children living in the household. The calculation of apportionment is set out in paragraph 1.1.25 below.

Owner-occupiers

- 1.1.24 There are a number of ways to fund house purchase. Apart from the annuity loan (or repayment mortgage), methods include endowment mortgages with and without profit, pension-linked mortgages, personal equity plan (PEP) mortgages and foreign currency-linked mortgages. These all work by generating a capital sum which will be at least sufficient, at the end of the term, to meet the amount borrowed. Exempt income will include both mortgage interest and the linked sums for actual or eventual repayment of the mortgage loan. If the linked payment is clearly designed to produce an eventual profit - for example, full with profits endowment mortgage or pension mortgages - and child maintenance is reduced as a result, the repayment element allowed for in exempt income will be limited to an amount which would be sufficient to pay off the loan under, say, a low cost endowment scheme.

In the same way as for rent cases, an owner-occupier's assessable housing costs will be subject to:

- * deductions for services and other charges, and for arrears of interest or capital, and property insurance;
- * non-dependant deductions;
- * sharing of costs where there is joint ownership and the other joint owner(s) is/are not the parent's present partner;
- * apportionment.

Apportionment of housing costs for the purposes of exempt income

1.1.25 Apportionment will be based on observed data that an adult needs to spend about three-quarters of the amount spent on housing by a married couple. Each child will be assumed to require one-fifth of the amount spent by a married couple without children. This approach will give the following results for **exempt income**:

- a) **absent parent is a single adult without children** - the whole of his/her net assessable housing costs will be allowed in exempt income.
- b) **absent parent has a partner but there are no children in his/her family** - the proportion allowed in exempt income will be three-quarters of the net assessable housing costs. For example, where an absent parent has remarried, pays housing costs of £50 per week, and there are no children in this family, his/her share of the housing costs to be allowed in **exempt income** will be:

$$£50 \times 0.75 = £37.50$$

i.e. Net assessable rent $\times$ 0.75

- c) **absent parent's family includes a partner and children** - the proportion of housing costs allowed in exempt income will be the sum of a share for the absent parent and each natural child divided by the sum of the share for the absent parent and partner and shares for each child, (natural or step) in the family. In decimal terms, this would be expressed as the sum of 0.75 for the absent parent plus 0.2 for each natural child, divided by the total of 1.0 for himself or herself and/or partner) plus 0.2 for each child in the family. (See example on page 45).

1.1.25.1 TABLE THREE (on page 44) sets out a number of family types and the apportionment of housing costs for each.

TABLE THREE: APPORTIONMENT OF HOUSING COSTS

<i>Family Type</i>	<i>Absent Parent's share</i>	<i>Household total</i>	<i>Share allowed in exempt income</i>	<i>Share as % of housing costs</i>
<i>Absent parent on own</i>	1	1	1	100.00%
<i>Absent Parent remarried, no children</i>	.75	1	.75 ----- 1	75.00%
<i>Absent Parent remarried, 1 natural child</i>	.95	1.2	.95 ----- 1.2	79.17%
<i>Absent Parent remarried, 1 step child</i>	.75	1.2	.75 ----- 1.2	62.50%
<i>Absent Parent remarried, 2 natural children</i>	1.15	1.4	1.15 ----- 1.4	82.14%
<i>Absent Parent remarried, 1 natural child and 1 step child</i>	.95	1.4	.95 ----- 1.4	67.86%
<i>Absent Parent remarried, 2 step children</i>	.75	1.4	.75 ----- 1.4	53.57%
<i>Absent Parent remarried, 2 natural children and 1 step child</i>	1.15	1.6	1.15 ----- 1.6	71.88%
<i>Absent Parent remarried, 1 natural child and 2 step children</i>	.95	1.6	.95 ----- 1.6	59.38%
<i>Absent Parent remarried, 2 natural and 2 step children</i>	1.15	1.8	1.15 ----- 1.8	63.89%
<i>Absent Parent remarried, 3 natural children and 1 step child</i>	1.35	1.8	1.35 ----- 1.8	75.00%
<i>Absent Parent remarried, 1 natural child and 3 step children</i>	.95	1.8	.95 ----- 1.8	52.78%

Example

Tom lives with Grace who has a son, Luke, aged 7 from her first marriage, and they now have a baby, Maureen aged 18 months. They are buying their home with a repayment mortgage: they borrowed £50,000, and the current total payment is £441.04 per month, of which £407.30 is interest. The apportionment of these housing costs will be as follows:

<u>Mortgage:</u> total repayment of	441.04 monthly	101.78	per week
Proportion allowed for			
Tom	0.75		
Maureen	0.20		

	0.95		
out of total shares			
Tom and Grace	1.00		
Maureen	0.20		
Luke	0.20		

	1.40		
	=====		
Proportion for			
Tom and Maureen	0.95/1.40 x		
	£101.78		
<u>Housing costs allowed in</u> <u>exempt income</u>		69.07	per week

1.1.26

Other Types of Housing Cost (Section 42 Special Cases - see part 1.2)

- a) **Parent as non-dependant:** where the absent parent is living as a non-dependant in some-one else's household, no housing allowance will be added in exempt income since he/she has no formal housing costs. However, provision will be made in protected income. The amount will be equivalent to the non-dependant deduction which would be taken in respect of him/her if the householder with whom he/she lives were on Housing Benefit or receiving Income Support for housing costs.
- b) **Parent as boarder:** where there is an inclusive board and lodging charge, the amount included in exempt income will be strictly the accommodation element of the charge. It will not include the portion of the charges which are, for example, for meals or heating.
- c) **Mixed or composite hereditaments:** payments made in respect of mixed or composite hereditaments will be split into domestic and business elements. The parent will normally be expected to provide information about the proportion. Where the domestic element appears abnormally high, the proportion allowed may be assessed, by reference to total floor area used for each purpose.
- d) **Reasonableness:** housing costs calculated according to rules set out above will normally be allowed in full. However, it is expected that a parent should have acted reasonably in taking on housing costs in the light of existing commitments, which include the need to maintain his/her children, and future commitments. It will be possible to restrict allowable housing costs in cases where an absent parent is held to have taken on avoidably high housing costs with the aim of reducing the maintenance liability. Housing costs which constitute an apparently high proportion of net income may be accepted in cases where the parent has a low income.

DEDUCTION RATE

Up to the Maintenance requirement

1.1.27

A deduction rate of 50 per cent will be applied to the combined assessable income of both parents until the maintenance requirement is met. The absent parent will be expected to pay his share to the person with care either directly or to the agency. A lower rate will apply for maintenance over and above the maintenance requirement - the additional element.

ADDITIONAL ELEMENT

- 1.1.28 Where the total amount of assessable income exceeds that needed to meet the maintenance requirement, the formula provides for an additional amount of maintenance to be calculated and levied.
- 1.1.29 The lower deduction rate to be applied to the balance of assessable income remaining after the maintenance requirement is met will be 25%. This will apply under the formula until the maximum amount of maintenance is reached in each case. When both the absent parent and the parent with care have assessable income both will pay towards the maintenance requirement and the additional maintenance. This will be worked out according to each parent's share of assessable income. (See example 1.1.13 above).
- 1.1.30 The maximum amount will be calculated by reference to Income Support allowances and will then be uprated automatically. The maximum amount of formula maintenance will comprise an extra amount for each child (on top of the maintenance requirement) calculated as follows:

the amount of the Income Support personal allowance for each child as included in the maintenance requirement

PLUS

the amount of the Income Support Family Premium

the total of these **multiplied by 3**

The multiplier and the use of Income Support rates were chosen as a straight forward way of arriving at a reasonable level of maximum maintenance.

Example

Karen and James are divorced. They have two children Louise aged 10 and Emma aged 15. Karen is a lone parent and has no income apart from Income Support. James has a gross income of £5,694 per month and allowable housing costs of £6,000 per annum.

The maintenance requirement is £69.65.

James' exempt income is £154.74.

James' assessable income is:

	<i>£ per week</i>
<i>net income (after tax and national insurance)</i>	<i>850.69</i>
<i>less exempt income</i>	<i>154.74</i>

total assessable income

£695.95 per week

The maintenance requirement of £69.65 is met when 50% of the first £139.30 of assessable income is paid. James has a further £556.65 available from which more maintenance can be paid.

The maximum amount of maintenance he will be expected to pay under the formula is calculated as follows:

Maintenance requirement for Louise and Emma = £ 69.65

Additional element for Louise and Emma

Louise child allowance + family premium

(£13.60 + £8.70 = £22.30) x 3 = £ 66.90

Emma child allowance + family premium

(£20.00 + £8.70 = £28.70) x 3 = £ 86.10

Total maintenance payable = £222.65

James will pay 25% of the remaining £556.65 of assessable income, i.e. £139.16. Thus, the total maintenance he will pay is £208.81 (£69.65 plus £139.16) which, in this case, is less than the maximum amount of maintenance (£222.65) payable for Louise and Emma.

PROTECTED LEVEL OF INCOME

- 1.1.31 Protected income provides that an absent parent will retain enough income after paying maintenance to meet his or her day to day needs and that of any second family. To ensure this, an adjustment will be made to the assessed amount of maintenance in those cases where the absent parent's income would otherwise fall below his protected level.

The protected level of income will reflect the day to day expenses of the absent parent and his/her latest family ie including any partner and stepchildren, or other dependent children (but not foster children) living with them. It will not include non-dependent people living in the same house or any person who has reached 16 and left school.

- 1.1.32 There are five elements in calculating the level of protected income. These are:

- a) the amount of the Income Support adult personal allowance for someone aged 25 or more or, if the absent parent has a partner, the amount of Income Support personal allowance for a couple where both are aged not less than 18; for each child, the amount of the Income Support personal allowance that would be appropriate for a child of the same age; and the amount of any Income Support premiums which would be applicable if Income Support were claimed;

- b) reasonable housing costs for the whole family (see paragraphs 1.1.22 to 1.1.25);
- c) 80% of the Community Charge liability for members of the family less any Community Charge Benefit;
- d) a standard margin of £8 in all cases;
- e) a further margin of 10% of income above the basic protected income level.

1.1.33 Basic protected income consists of the first four elements described in paragraph 1.1.32. Where the net income of the absent parent exceeds this amount, protected income will be increased by 10% of the difference between the income and the basic protected income level. The extra margins of £8 and 10% will ensure the absent parent is left with an income in excess of the appropriate Income Support level.

Example

In Example Two in the Appendix to this Part (page 59), Arthur has a wife Elizabeth, and a baby, Simon. Elizabeth's daughter from her previous marriage, Evelyn aged 7, also lives with them. The family's total income is £227.54. If he pays the assessed amount of maintenance, £38.68, he will still have £188.86 as disposable income. In working out Arthur's protected income level, the total of the allowances and premiums for all the family, housing costs for the whole family (only the interest on a mortgage is allowed in protected income), 80% of the Community Charge liability, £8 basic margin, and £1.97 additional margin are added together. This produces a protected income level of £209.83. Because Arthur's disposable income (£188.86) is less than his protected income level, (£209.83) the assessed maintenance is reduced by the difference £20.97; he has to pay £17.71 instead of £38.68.

1.1.34 Disposable income is based on the income of all members of the current family, ie including the income of any partner and children. In most instances, the amount to be included will be calculated in precisely the same way that the amount of net income is calculated for assessable income. Differences are:

- it will not be necessary to separate out the joint resources of members of the family
- where the overriding £10 disregard on income is applicable (see Table Two, page 37), this will apply to the family rather than the individual
- payments from an insurance policy for mortgage protection will be disregarded, since no allowance is made for capital repayment in protected income.

- 1.1.35 Where the application of protected income produces an amount of maintenance payable which is less than £2, the minimum payment rules will apply (see paragraph 1.1.36).

MINIMUM PAYMENT

- 1.1.36 Except where a person is in an exempt ("zero rated") category, every absent parent will be required to pay a minimum amount of maintenance. This will apply where the amount payable under the formula would otherwise be nil or an amount less than the minimum. The minimum amount will be set at 5 per cent of the amount of the Income Support adult personal allowance for someone aged 25 or over (rounded to the nearest 5 pence) - at current rates, this will be £2 a week. The following absent parents will be exempt:

- those in receipt of or with entitlement to sickness benefit, statutory sick pay, invalidity benefit, severe disablement allowance
- those in receipt of attendance allowance, disability living allowance, disability working allowance, an industrial disablement benefit or a war disablement benefit
- those in receipt of or with entitlement, but for an overlapping benefit, to Invalid Care Allowance
- those with allowance for a child included in the calculation of his exempt or protected level of income
- prisoners
- those still at school

An absent parent on Income Support will normally have an amount equal to the minimum payment deducted from his/her Income Support by way of a contribution to maintenance. Such a contribution will be expected where the absent parent's circumstances are the same as those of a parent who is not exempt from the minimum payment.

SPECIAL CASES

- 1.2 The formula described above will deal with the majority of cases where a child is looked after by one parent and maintenance is sought from the other. There will be circumstances when this does not apply and some adjustment may be required to the formula so that it works for these circumstances. Section 42 of the Child Support Act provides for regulations to define special cases and to enable special arrangements to be made for them. Paragraphs 1.2.1-1.2.7 describe the circumstances and the adjustments to be made to the formula.

Both Parents are Absent Parents

1.2.1 If neither parent looks after the child, but the child is cared for instead by, say, a grandparent, aunt or family friend, the person with care of the child may apply for a maintenance assessment (see Part Two). Both parents (if alive) will be absent parents in this case and **both** have a responsibility to pay maintenance for the child. The amount of the maintenance requirement will be calculated in the usual way except that, if the child is in the care of an institution rather than an individual, the amount of the lone parent premium will **not** be included. The ability of both parents to pay maintenance will be calculated, but the arrangements described in paragraphs 2, 3 and 4 of Schedule 1 to the Child Support Act will be modified - so that the assessable income of both parents will be treated in the same way as the income of the absent parent in the standard calculation ie:

- a protected income calculation will be done separately for each parent
- either or both parents may be expected to make a minimum payment if this is appropriate
- both parents will be expected to **pay** to the person with care the amount due from them under the calculation

Example

Maureen and William are the absent parents of Jake who is 10 years old and is looked after by his widowed grandmother. William has an assessable income of £50 and Maureen has an assessable income of £30.

MAINTENANCE REQUIREMENT:	£ PER WEEK
<i>Child Allowance</i>	13.60
<i>Family Premium</i>	8.70
<i>Lone Parent Premium</i>	4.45
<i>Adult Allowance</i>	39.65
<i>Subtotal</i>	66.40
LESS Child Benefit	9.25
TOTAL MAINTENANCE REQUIREMENT:	£57.15 PER WEEK

As the combined assessable incomes of both parents will not fully cover the maintenance requirement:

William pays 50% of his assessable income in maintenance. This is £25.

Maureen pays 50% of her assessable income in maintenance. This is £15.

So Jake receives £40 per week in maintenance.

Shared Care

1.2.2

There will sometimes be cases where there is more than one person with care of a child eg care is shared between a parent and a grandparent who live in separate households, or between a parent and a local authority. The amount of maintenance the absent parent will be expected to pay will be calculated in the usual way (or as described in paragraph 1.2.1 if both are absent parents). The absent parent (or parents) will be expected to pay the same amount as if there were one person with care of the child. However, it may be appropriate to divide the amount paid between the two persons with care. If this is appropriate, the maintenance will be split according to the average number of nights a week the child spends or is expected to spend with each person with care worked out over a year. For example, if one person looks after the child for four nights from Monday morning to Friday evening and the other looks after the child for three nights over the weekend, then the first person's share would be $\frac{4}{7}$ and the second $\frac{3}{7}$. No share will be worked out for a person who has the child for less than two nights a week on average. The Child Support Agency will calculate shares and arrange payments accordingly where the persons with care do not make their own arrangements and one of them asks the Child Support Agency to do so. In other cases, arrangements will be made for payment to the person who has applied for maintenance. If more than one application is made (see paragraph 2.2.3), payment will be apportioned.

Example

There are 2 persons with care. Anne, the parent, has care of the children for three days but on the remaining four days of the week when she works, Carol, an aunt, looks after the children.

Chris, the absent parent, is able to pay £70 per week in maintenance. Of this £30 ($\frac{3}{7} \times £70$) is appropriate to Anne, the parent with care and £40 ($\frac{4}{7} \times £70$) to Carol, the aunt.

Normally all the £70 will be paid to the parent with care, leaving her to make suitable arrangements with the aunt. Split payments will be arranged where necessary.

Absent Parent Shares Care of the Child

- 1.2.3 There will be cases where a child spends time in the (different) households of both parents. The standard calculation will not fit here because both parents could be said to be parents with care for part of the time and absent parents for part of the time. It is intended that the person who looks after the child for the longer period will be regarded as the "person with care"; and the parent with the shorter period will be treated as the "absent parent". But the amount to be paid by the absent parent will be adjusted so that he or she retains a proportion of the total maintenance available which is equal to the proportion of the time that he or she has care of the child.
- 1.2.4 When deciding who is to be treated as the parent with care and who is the absent parent, and on the division of the maintenance assessment, it will be necessary to establish how the parents share care. This will be worked out on the basis of the average number of nights the child spends, or is expected to spend, with each parent per week worked out over a year. Where possible, this will be based on what the parents themselves say, taking account of any residence or contact order. If the parents cannot agree, the Child Support Officer will decide. In doing so, the starting point will be the extent to which the parents do agree, and the information provided by both as to what has happened in the past. If necessary, the Child Support Officer will have regard to any decision about the payment of Child Benefit. The result will be reflected in the maintenance assessment. If either parent is dissatisfied, there will be a right of review and of appeal against that assessment.
- 1.2.5 The maintenance assessment in these cases will differ from the standard calculation in three ways:
- a) in the exempt income of each parent, a proportion of the allowances for the child - personal allowance, disabled child premium, family premium (unless another child would entitle the parent to the full rate of premium, and the lone parent premium if relevant), plus the child's share of housing costs - will be included in the calculation of their exempt income. The proportion will reflect the proportion of time spent with the parent calculated as in paragraph 1.2.3.
 - b) the amount of the maintenance due from the absent parent and the notional maintenance from the parent with care will then be worked out in the usual way. The sum of these two amounts will be the total amount of maintenance due for the child. The absent parent will be deemed to have already contributed the proportion of the total maintenance due for the child which is equivalent to the proportion of time the child spends with him. So, if the absent parent is due to pay maintenance of £50 a week, and the parent with care can afford notional maintenance of £20 a week, then the total amount of maintenance due for the child will be £70 a week. If the absent parent

looks after the child for 2 nights a week, he or she will be deemed to have met 2/7 of the £70 - that is, £20. So the £50 he or she was assessed to pay to the person with care will be reduced by £20, to £30.

- c) the protected income calculation like exempt income will include a proportion of the allowances relevant to the child

Different Children of an Absent Parent are in the Care of Different People

1.2.6 There may be situations where children of an absent parent are cared for by more than one person. This could arise where there has been more than one marriage or relationship and the children are in each case looked after by the other parent, or where some children of a relationship are cared for by the other parent and others are cared for by, say, a grandparent. An application could be received from one or more or all of the persons with care. It will therefore be necessary to have a means of sharing the maintenance available from the absent parent.

1.2.7 If an application is received from only one person with care in relation to the absent parent, the absent parent's assessable income and the maintenance he/she is to pay for the children covered by that application will be worked out in the usual way. If a subsequent application is received from another person with care of a child of the absent parent's, the maintenance the absent parent can afford to pay will be shared between the maintenance assessment units. This will be done on the basis of the comparative size of the maintenance requirements.

Example

Ken is the absent parent of Angela's children, Ben and Emily, and Kate's child, Trevor. He has an assessable income of £80. The maintenance requirement for Angela's children - Ben aged 6 and Emily aged 12, is £69.65 and that for Kate's child, Trevor aged 11 is £57.15 the total maintenance requirement is $£69.65 + £57.15 = £126.80$

The share of Angela's family is $\frac{69.65}{126.80}$

The share of Kate's family is $\frac{57.15}{126.80}$

*Neither Angela nor Kate has any assessable income;
Ken's assessable income is £80:*

Angela would receive $\frac{69.65}{126.80} \times 80 \times 50\% = £21.97$

Kate would receive $\frac{57.15}{126.80} \times 80 \times 50\% = £18.03$

A Person With Care Looks After the Children of More Than One Absent Parent

- 1.2.8 There may be cases where there has been more than one relationship, eg the parent with care may have had children from a first marriage, re-partnered and had another child and, on the break up of second relationship, seeks maintenance from both absent parents. (Cases where there are two absent parents of the same child are dealt with in paragraph 1.2.1). Each absent parent's assessable income will be calculated in the normal way, but the amount of maintenance due will be adjusted in two ways:-
- a) the maintenance requirement will be adjusted:- in each case, the maintenance requirement will comprise the allowances relating specifically to the children of the absent parent in question (offset by the Child Benefit for these children) as usual; but the allowances which relate generally to all the children, ie the amount of Income Support family and lone parent premiums and the allowance for the adult caring for the children, will be shared among the absent parents. The total of these allowances will be divided by the number of absent parents in relation to that person with care.
 - b) where the parent with care has assessable income, this will be shared out in relation to the maintenance requirement for the children of whom she is a parent. This will be on the same basis as described in paragraph 1.2.7 for an absent parent with children looked after by different persons with care (ie in proportion to the size of the maintenance requirement).

Example

Katherine, the parent with care who receives Income Support, has two children Luke and John aged 7 and 9 by a previous marriage and Mark aged 3 from a subsequent relationship.

Maintenance requirement for Luke and John:

	£ PER WEEK
<i>Child Allowances</i>	27.20
<i>Family Premium</i>	4.35 (half of £8.70)
<i>Lone Parent Premium</i>	2.23 (half of £4.45)
<i>Adult Allowance</i>	19.83 (half of £39.65)
<i>Subtotal</i>	53.61
<i>LESS Child Benefit</i>	16.75
TOTAL MAINTENANCE REQUIREMENT	£36.86 PER WEEK

Maintenance requirement for Mark:

	£ PER WEEK
<i>Child Allowances</i>	13.60
<i>Family Premium</i>	4.35 (half of £8.70)
<i>Lone Parent Premium</i>	2.23 (half of £4.45)
<i>Adult Allowance</i>	19.83 (half of £39.65)
<i>Subtotal</i>	40.01
<i>LESS Child Benefit</i>	7.50
TOTAL MAINTENANCE REQUIREMENT	£32.51 PER WEEK

The rest of the maintenance formula will be applied in the usual way.

APPENDIX TO PART ONE

Examples of the Calculation of a Maintenance AssessmentExample 1

Sally is divorced from Peter. Their two children, Wayne aged 6 and Darrell aged 8, live with Sally who rents her home from the Local Authority. She is on Income Support.

The maintenance requirement for Wayne and Darrell will be:

Child Allowances	27.20	as Wayne and Darrell are both aged under 11 the allowance is £13.60 each
Family Premium	8.70	
Lone parent Premium	4.45	
Adult Allowance	39.65	the adult personal allowance
Subtotal	80.00	
less Child Benefit	16.75	Child Benefit is £9.25 for the eldest, elder or only child, £7.50 for other children
Total Maintenance Requirement	63.25	per week

Peter is living alone in privately rented accommodation for which he pays £40 a week. His gross earnings, calculated over the five weeks before the effective date, are £185 per week.

Peter's exempt income is:

Personal Allowance	39.65	
Housing Cost	40.00	
Total Exempt Income	79.65	per week

Peter's assessable income is:

<i>Gross Earnings</i>		<i>185.00</i>	
<i>less tax</i>	<i>30.41</i>		
<i>national insurance</i>	<i>13.01</i>	<i>43.42</i>	
<i>Net Income</i>		<i>141.58</i>	<i>per week</i>
<i>less Exempt Income</i>		<i>79.65</i>	
<i>Total Assessable income</i>		<i>61.93</i>	
<i>Peter pays 50% of his assessable income in maintenance: this is</i>		<i>30.97</i>	<i>per week</i>

Example 1A

Peter's gross earnings have now increased by £25 a week. Following a review, the assessment is now:

<i>Gross Earnings</i>		<i>210.00</i>	
<i>less tax</i>	<i>36.66</i>		
<i>national insurance</i>	<i>15.26</i>	<i>51.92</i>	
<i>Net Income</i>		<i>158.08</i>	<i>per week</i>
<i>less Exempt Income</i>		<i>79.65</i>	
<i>Total Assessable Income</i>		<i>78.43</i>	
<i>50% of this assessable income is</i>		<i>39.22</i>	<i>per week</i>

Assessed maintenance has increased from £30.97 to £39.22, an increase of £8.25 (see paragraph 2.4.3 about change of circumstances reviews).

Example 2

Margaret used to live with Arthur, and they had two children, Emma aged 10 and Matthew aged 12 who live with Margaret. Margaret now lives in a council house, pays £30 a week rent, works for 24 hours a week, and has gross earnings of £70 a week.

The maintenance requirement for Emma and Matthew is:

Child Allowances	33.60	allowance for Emma (under 11) is £13.60, and for Matthew (aged 11 to 15) is £20.00
Family Premium	8.70	
Lone parent Premium	4.45	
Adult Allowance	39.65	
Sub-total	86.40	
less Child Benefit	16.75	Child Benefit is £9.25 for the eldest, elder or only child, £7.50 for other children
Total Maintenance Requirement	69.65	per week

Margaret has earnings and is not on Income Support. She may, therefore, have a liability to make a contribution towards the children's support.

Margaret's exempt income is:

Child Allowances	33.60	Allowance for a child aged under 11 is £13.60 and, for a child aged 11 to 15, £20.00.
Family Premium	8.70	
Lone parent Premium	4.45	
Adult Allowance	39.65	
Housing costs	30.00	
less Housing Benefit	8.40	
Total Exempt Income	108.00	per week

Margaret's assessable income is:

Gross earnings	70.00	
less Tax	0.00	
national insurance	2.66	
Net earnings	67.34	
Family Credit	60.54	
Total Net Income	127.88	
less Exempt Income	108.00	
Assessable Income	19.88	per week

Arthur has since married a widow, Elizabeth, who has a daughter Evelyn aged 7 from her first marriage. They now have a baby, Simon, aged 18 months. They are buying their home with a repayment mortgage: they borrowed £50,000, and the current total payment is £441.04 per month, of which £407.30 is interest. Arthur earns gross £14,040 per year, or £270 per week. Elizabeth is not working. They have a joint building society account on which the last six monthly interest was £126.86.

Arthur's weekly exempt income will be:

Personal Allowance		39.65	
Allowance for Simon		13.60	
Family Premium		8.70	
Mortgage: monthly repayment £441.04	101.78		
Housing Costs:			
	0.75		
Share allowed for	0.20		
Arthur	----		
Simon	0.95		
Out of total shares			
Arthur & Elizabeth	1.00		
Evelyn	0.20		
Simon	0.20		

	1.40		
	=====		
Proportion for Arthur and Simon is	0.95/1.40	69.07	per week
Total Exempt Income		131.02	per week

Arthur's assessable income is:

Gross Earnings		270.00	per week
less tax	43.39		
national insurance	20.66	64.05	total deductions
Net earnings		205.95	per week
Interest on building society account - £126.06 for six months, half share = £63.03		2.42	per week
Total Net Income		208.37	
less Exempt Income		131.02	
Arthur's Assessable Income		77.35	
Margaret's Assessable Income was	19.88		
Margaret's and Arthur's Assessable Income totals	97.23		
50% of £97.23 is	48.62		
This is less than the Maintenance Requirement			
Arthur, therefore, should pay 50% of his Assessable Income in maintenance: this is		38.68	per week

Protected Income

The next question to consider is whether Arthur can actually afford this amount of maintenance. The first step is to count up the income of the whole household, including Elizabeth's.

<i>Arthur's net earnings</i>	205.95		
<i>Total building society account interest</i>	4.84		
<i>Child Benefit</i>	16.75		
Total Income		227.54	
<i>Less assessed maintenance</i>		38.68	
<i>Income which would be left after paying maintenance</i>			188.86

This figure of £188.86 has to be compared with Arthur's protected income level. The calculation of this is based closely on the Income Support level that would apply to Arthur, Elizabeth and their family.

Arthur's protected income level is:

<i>Personal Allowance for Arthur and Elizabeth</i>	62.25	
<i>Child Allowance for Simon</i>	13.60	
<i>Child Allowance for Evelyn</i>	13.60	
<i>Family Premium</i>	8.70	
<i>Mortgage interest</i>	93.99	<i>per week</i>
<i>80% of the Community Charge liability for Arthur and Elizabeth - £252 per year each</i>	7.72	<i>per week</i>
<i>Initial margin</i>	8.00	
Basic Protected Income	-----	207.86
<i>Total net income of Arthur's household</i>	227.54	
<i>Net Income exceeds the Basic Protected Income level by</i>	19.68	
<i>Additional margin is 10% of that excess</i>		1.97
Total Protected Income	-----	209.83

This protected income level is greater than the actual amount left from Arthur's and Elizabeth's income when normal maintenance is deducted. So the amount of maintenance Arthur has to pay is reduced until his disposable income equals protected income.

<i>Total income of Arthur and Elizabeth</i>	227.54	
<i>less Protected Income level</i>	209.83	
<i>Protected Maintenance Payable</i>		17.71

Example 2A

Arthur now has an increase in gross earnings of £20 per week. His maintenance assessment is recalculated as follows:

<i>Gross Earnings</i>		290.00	<i>per week</i>
<i>less tax</i>	48.39		
<i>national insurance</i>	22.46	70.85	<i>total deductions</i>
<i>Net earnings</i>		219.15	<i>per week</i>
<i>Interest on building society - £126.06 for six months, half share = £63.03</i>		2.42	<i>per week</i>
<i>Total Net Income</i>		221.57	
<i>less Exempt Income</i>		131.02	
<i>Arthur's Assessable Income</i>		90.55	
<i>Margaret's Assessable Income was</i>	19.88		
<i>Margaret's and Arthur's Assessable Income totals</i>	110.43		
<i>50% of £110.43 is</i>	55.22		
<i>This is less than the Maintenance Requirement</i>			
<i>Arthur, therefore, should pay 50% of his Assessable Income in maintenance: this is</i>		45.28	<i>per week</i>

Again, this maintenance assessment must be tested against Arthur's protected income:

<i>Arthur's net earnings</i>	219.15		
<i>Total building society account interest</i>	4.84		
<i>Child Benefit</i>	16.75		
Total Income		240.74	
<i>less assessed maintenance</i>		45.28	
<i>Income which would be left after paying maintenance</i>			195.46

This figure of £195.46 has to be compared with Arthur's protected income level. The calculation of this is based closely on the Income Support level that would apply to Arthur, Elizabeth and their family.

<i>Personal Allowance for Arthur and Elizabeth</i>	62.25	
<i>Child Allowance for Simon</i>	13.60	
<i>Child Allowance for Evelyn</i>	13.60	
<i>Family Premium</i>	8.70	
<i>Mortgage interest</i>	93.99	<i>per week</i>
<i>80% of the Community Charge liability for Arthur and Elizabeth - £252 per year each</i>	7.72	<i>per week</i>
<i>Initial margin</i>	8.00	
Basic Protected Income		207.86
<i>Total net income of Arthur's household</i>	240.74	
<i>Net Income exceeds the Basic Protected Income by</i>	32.88	
<i>Additional margin of 10% of that excess</i>		3.29
Total Protected Income		211.15

This protected income level is greater than the actual amount left from Arthur's and Elizabeth's income when the normal maintenance is deducted.

<i>Total income of Arthur and Elizabeth</i>	240.74
<i>Less Protected Income</i>	211.15
<i>Protected maintenance payable</i>	29.59

*The result of an increase of £20 in Arthur's salary (this is £13.20 net after deductions) is an increase of £6.60 in normal maintenance assessment. However, Arthur's circumstances before the salary increase were such that he needed the benefit of **protected income**, and the maintenance payable was reduced to £17.71. His higher net income brings maintenance after protection to £29.59, an increase of £11.88, which is imposed immediately. Arthur sees an increase in his disposable income of £1.32. (See paragraph 2.4.3).*

Example 3

Vera is divorced from David. They had two children, George aged 12 and Fiona aged 14 who live with Vera. Vera is now married to Michael and they have a son, Leo, aged 6. Michael has a chronic illness and receives Invalidity Benefit totalling £125.45. They have a mortgage on their home, paying a total of £164.55 a month, of which £143.75 is interest.

The maintenance requirement for George and Fiona will be:

<i>Child Allowances</i>	40.00	<i>allowance for George and Fiona (children aged 11 to 15) £20.00 each</i>
<i>Family Premium</i>	8.70	
<i>Adult Allowance</i>	33.70	<i>rate of adult allowance reduced by 20% because the qualifying children are aged 11 or over</i>
<i>Subtotal</i>	82.40	
<i>less Child Benefit</i>	16.75	<i>Child Benefit is £9.25 for the eldest, elder or only child, £7.50 for other children</i>
<i>Total Maintenance Requirement</i>	65.65	<i>per week</i>

David is now married to Olivia. They both work. David's earnings are £26,000 a year gross and Olivia's are £14,000. They are buying their home with a Personal Equity Plan linked mortgage. They borrowed £62,000, and the current total payment is £688.14 per month, of which £538.14 is interest, and £150 goes to the PEP. They do not have any children.

David's weekly exempt income will be:

Personal Allowance		39.65	
Mortgage: monthly repayment £688.14	158.80		
Share allowed for David is of housing costs	0.75 x	119.10	per week
Total Exempt Income		158.75	per week

David's assessable income is:

Gross Earnings		500.00	per week
less tax	100.89		
national insurance	31.46	132.35	total deductions
Net Earnings		367.65	
less Exempt Income		158.75	
David's Assessable Income		208.90	per week

Vera does not have any assessable income. The amount of maintenance due from David is therefore based wholly on his own income.

<i>David's Assessable income</i>		208.90	<i>per week</i>
<i>The maintenance requirement is</i>	65.65		
<i>This basic element will use assessable income of</i>		131.30	<i>Basic deduction rate is 50%</i>
<i>This leaves available for additional maintenance</i>		77.60	
<i>The additional amount is 25% of 77.60</i>	19.40		<i>Deduction rate for additional element is 25%</i>
<i>Total maintenance that David should pay</i>	85.05		

The next question to consider is whether David can actually afford this amount of maintenance. The first step is to count up the income of his whole household, including Olivia's.

<i>David's net earnings</i>	367.65		
<i>Olivia's net earnings</i>	197.17		
<i>Total Income</i>		564.82	
<i>less assessed maintenance</i>		85.05	
<i>Income which would be left after paying maintenance</i>			479.77

This figure of £479.77 has to be compared with David's protected income level.

<i>Personal Allowance for David and Olivia</i>	62.25	
<i>Mortgage interest</i>	124.19	<i>per week</i>
<i>80% of the Community Charge liability for David and Olivia - £252 per year each</i>	7.72	<i>per week</i>
<i>Initial margin</i>	8.00	
<i>Basic Protected Income</i>		202.16
<i>Total net income of David and Olivia</i>	564.82	
<i>Net income exceeds Basic Protected Income by</i>	362.66	
<i>Additional margin is 10% of that excess</i>		36.27
<i>Total Protected Income</i>		238.43

David's and Olivia's income when the normal maintenance is deducted is very considerably greater than the Protected Income figure, so no protection is required.

David pays £85.05 in maintenance.

David now has an increase in salary of 10% - £2,600 per year. This is reflected in a revised maintenance calculation as follows:

<i>Gross Earnings</i>		550.00	<i>per week</i>
<i>less tax</i>	113.39		
<i>national insurance</i>	31.46	144.85	<i>total deductions</i>
<i>Net Earnings</i>		405.15	
<i>less Exempt Income</i>		158.75	
<i>David's Assessable Income</i>		246.40	<i>per week</i>

Vera still does not have any assessable income. The amount of maintenance due from David is therefore based wholly on his own income.

<i>David's Assessable income</i>		246.40	<i>per week</i>
<i>The maintenance requirement is</i>	65.65		
<i>This basic element will use assessable income of</i>		131.30	<i>Basic element taper is 50%</i>
<i>This leaves available for additional maintenance</i>		115.10	
<i>The additional amount is 25% x £115.10</i>	28.78		<i>Taper for additional element is [25%]</i>
<i>Total maintenance that David should pay</i>	94.43		

Again, can David actually afford this amount of maintenance? The first step is to count up the income of his whole household, including Olivia's.

<i>David's net earnings</i>	405.15		
<i>Olivia's net earnings</i>	197.17		
<i>Total income</i>		602.32	
<i>Less assessed maintenance</i>		94.43	
<i>Income which would be left after paying maintenance</i>			507.89

This figure of £507.89 has to be compared with David's protected income level.

<i>Personal Allowance for David and Olivia</i>	62.25	
<i>Mortgage interest</i>	124.19	<i>per week</i>
<i>80% of the Community Charge liability for David and Olivia - £252 per year each</i>	7.72	<i>per week</i>
<i>Initial margin</i>	8.00	
<i>Basic Protected Income</i>		202.16
<i>Total net income of David and Olivia</i>	602.32	
<i>Net income exceeds Basic Protected Income by</i>	400.16	
<i>Additional margin is 10% of that excess</i>		40.02
<i>Total Protected Income</i>		242.18

David's and Olivia's income when the normal maintenance is deducted is very considerably greater than the Protected Income figure, so no protection is required.

The increase in salary of £50 per week gross, £37.50 net, results in an increase in maintenance of £9.38 from £85.05 to £94.43. (See paragraph 2.4.3)

PART TWO: ASSESSMENTS:

PROCEDURAL REGULATIONS REQUIRED FOR APPLICATIONS, ASSESSMENTS, REVIEWS & TERMINATIONS

2.1 INTRODUCTION

2.1.1 Policy background and intention

Detailed procedures for dealing with applications, making and cancelling assessments, reviews and appeals, will be set out in regulations. These will be largely modelled on provisions in Social Security (Claims and Payments) Regulations 1987, (SI 1987/1968) and in the Social Security (Adjudication) Regulations 1986 (SI 1986/2218). There will be some differences since the Child Support provisions will deal with at least two parties - a person with care and an absent parent - rather than with one benefit claimant.

2.1.2 Provisions already made

The different types of applications for assessment are set out in Sections 4, 6 and 7 of the Child Support Act 1991, and Section 5 deals with multiple applications. Part 2 of Schedule 1 sets out various general provisions about assessments and Sections 16 to 25 deal with reviews and appeals.

2.2 MAKING OF APPLICATIONS FOR MAINTENANCE ASSESSMENTS

The regulations will cover the form of the application, who can apply, who will supply the form, the destination of the form, the date on which an application is treated as having been made, and a definition of "properly completed".

2.2.1 Application forms

It is intended that an application for a maintenance assessment (under Section 4(1), 6(5)(a) or 7(1) of the Child Support Act) may be combined with an application for collection and enforcement under Section 4(2), 6(5)(b), or 7(3).

Applicants for a maintenance assessment will be required to complete and sign a maintenance application form. The form will:

- a) authorise the Secretary of State to take action to assess maintenance payable (and where appropriate, authorise collection and enforcement as well)

and

- b) supply information needed to:
 - i) trace the absent parent
 - ii) make the assessment
 - iii) collect and enforce the maintenance payments

(Details of the information required are set out in Part Four, page 98 onwards).

The precise specification of the application form will not appear in the regulations. Under Section 6(6) applications are required to be made on a form provided by the Secretary of State; maintenance application forms will be designed for this purpose and for applications under the other Sections of the Act. The regulations will provide for the forms to be used for applications made under Sections 4 and 7 of the Act. Separate forms will need to be completed authorising collection and enforcement where the person with care, (or the child in Scotland) originally opted for assessment only and subsequently changes his or her mind. Application forms will normally be issued by the officials of the Department of Social Security, either the Child Support Agency or the Benefits Agency; this will enable the progress of the application to be tracked by the computer system. The forms will be issued free of charge.

2.2.2

Who can apply?

Applications will be accepted from either a person with care or an absent parent (Section 4), or in addition, a child who is 12 or over in Scotland (Section 7). Applications can be required (Section 6) from parents with care who are claiming or are included in a claim by a partner for Income Support, Family Credit, or Disability Working Allowance. This requirement to make an application may be waived in specific circumstances, as explained in Part Five (paragraph 5.1.1). Applications will be subject to other conditions:

- a) only one application for a maintenance assessment can be accepted in respect of the same child. (Section 5(2)).
- b) where there is more than one person with care and at least one person with care has parental responsibility, no application will be accepted from a person with care who does not have parental responsibility for the child (or in Scotland, parental rights over the child). (Section 5(1)).
- c) a child who is 12 or over in Scotland will only be able to apply if no application has been made by the person with care or absent parent (Section 7(1)(a)), or if the Secretary of State has not been authorised under Section 6 to collect and enforce maintenance and has not waived the requirement to make the authorisation (Section 7(1)(b)).

- d) an application from either the person with care or the absent parent under Section 4 will not be accepted if there is an existing maintenance assessment from an application under Section 6 (Section 4(9)) and the parent with care is still in receipt of Income Support, Family Credit or Disability Working Allowance.
- e) an application will not be accepted where the case falls outside the jurisdiction of the Agency, for example, where the absent parent habitually resides outside the United Kingdom or the child is over 19. In these cases an application for child maintenance can be made to the appropriate court.

2.2.3

Rules of Priority

It is intended that the regulations will set out clearly the procedures for accepting and rejecting applications and for treating more than one application as the same. For example where,

- a) an application under Section 4 is received from both the person with care and the absent parent, the application of the person with care will have priority over that of the absent parent. They will be treated as partially separate applications if the absent parent's application covers different children in addition to any in common with the person with care who have priority for the shared part of the application.
- b) several persons with care apply, the person with care who has parental responsibility (parental rights in Scotland) will have priority. (Section 5(1)).
- c) several persons with care have parental responsibility, the one with whom the child(ren) spend the greater proportion of time will have priority (decided as in paragraph 1.2.2).
- d) both absent parents apply (where the person with care is not a parent), the applications will be treated as a single application for an assessment.
- e) the same applicant makes a subsequent application under the same section and no assessment has been made, both/all will be treated as a single application.
- f) an assessment has been made and the same applicant makes a subsequent application under the same section, both/all applications will be treated as a single application provided there has been no material change. If there has, it will be treated as a request for a review under Section 17 due to a change of circumstances. (See paragraph 2.4.3).

- g) a person with care completes one application form under Section 6 and another under Section 4, they will be treated as the same application i.e. both as a Section 6 application. (Section 4(9) prevents applications being made under Section 4 if there is already an assessment from an application under Section 6).
- h) two persons with care for the children for equal amounts of time and neither has parental responsibility (parental rights in Scotland), priority will be given to the one who applied first. Where they apply at the same time, it will be treated as a single application.
- i) a child in Scotland applies at the same time as the absent parent or person with care or both, priority goes to the adults. If the absent parent or parent with care has already applied, (Section 7(1)(a)), or has not authorised the Secretary of State to collect and enforce under Section 6 but there has been no waiver of the requirement (Section 7(1)(b)), applications from the child will not be accepted.
- j) two or more qualifying children of the family apply simultaneously for maintenance the application from the oldest will have priority.

These rules of priority will only apply to properly completed applications accepted by the Secretary of State (see paragraph 2.2.5) and will operate up to the point the assessment is made.

A maintenance assessment made on the application of one person will need to be replaced by a later maintenance assessment made following a further application by that person or someone else where:

- k) an application is made under Section 6 and there is an existing assessment (Section 6(14));
- l) a child is in receipt of maintenance payments under Section 7 and the person with care subsequently changes his or her mind and indicates that he or she wishes to make an application on behalf of his or her children.

The Secretary of State will be able to direct that the maintenance will be paid to another person on behalf of the person with care if it is in the interests of the child or children. This is covered further in Part Six (paragraph 6.2.4.1).

2.2.4 Timing of applications

Under Section 4, applications can be made at any time by the absent parent or person with care.

Where Section 6 is applicable, the persons with care will be asked to return application forms within 7 days from the date of issue. This will be contained in guidance rather than specified in regulations.

Under Section 7, once a qualifying child in Scotland has reached the age of 12, and no application has been made by the absent parent or person with care, the child will be able to apply at any time whilst he remains a qualifying child as defined under the Act. A subsequent application from the person with care will override such an application.

2.2.5 Date on which an application for a maintenance assessment will be treated as having been made

The regulations will set out what "making an application" means and where the form should be sent. Making an application means completing the appropriate form and sending or delivering it to the appropriate office of the Child Support Agency. The date of the maintenance application will normally be taken to be the date of receipt of the maintenance application form by the Secretary of State. In general no payments for child maintenance under the Child Support Act will be due before a signed and completed maintenance application form is received by the Secretary of State. However, if the application is defective for any reason (e.g., it is incomplete, the wrong form, or unsigned), the Secretary of State will be able to treat the date of application as the date of original receipt of the inadequate form providing a correctly completed form is received by the Agency within 14 days of its reissue by the Child Support Agency.

It is intended that the date the application is treated as being made will be different from the date of receipt in the following cases:

- a) It will be possible for an application to be amended by the applicant before the assessment is made and the amended application will be treated as the original.
- b) Where there is a change of applicant for maintenance, for example, where the person with care dies, there will be a linking period for applications made within 8 weeks. This will avoid disruption to child maintenance.
- c) There will be provision for a different date where there is an Income Support claim. This will be in line with long-standing powers under Section 24 of the Social Security Act 1986 which allow the Secretary

of State to seek maintenance from a liable parent from the date of the start of the Income Support claim.

2.2.6 **Notification of Receipt of the Application to the Other Party or Parties**

The other party (absent parent, and/or parent with care) will be notified of the receipt of the application. This will take the form of a maintenance enquiry form. As with the application form it can be amended before the assessment is made and the form will be treated as the original. (See Table Four on page 79 for further details of the maintenance enquiry form).

2.3 **MAKING, CANCELLING OR REFUSING TO MAKE MAINTENANCE ASSESSMENTS**

The Secretary of State is obliged by Section 11(1) to refer any application for a maintenance assessment made to him to a Child Support Officer. This will follow the notification to the other party of the application. The Child Support Officer may make an assessment, and having made it, may at some later point cancel it, or refuse to make an assessment or refuse to cancel it. He may refuse to cancel an assessment where he is satisfied there are no grounds to cancel (a list of the circumstances where cancellation may take place is set out in paragraph 2.5.2). The Child Support Officer will not re-make an assessment where the alleged absent parent or the person with care is not such a person. This would involve such issues as who has care of the children and whether the relevant absent parent and the person with care are living together. Such decisions of a Child Support Officer will be subject to review (see paragraph 2.4 onwards) and appeal to a Child Support Appeal Tribunal (see Part Three).

2.3.1 **Notifications**

The Child Support Act requires that notifications are sent in certain circumstances and further notifications will be required in the regulations. These are summarised in Table Four on page 79.

2.3.1.1 The regulations will define "The date on which notification was given" as follows: 2 days (excluding Sundays and any date when a bank holiday is observed anywhere in the United Kingdom) after the date the assessment or other decision was made.

2.3.2 **Correction of accidental errors in decisions**

The regulations will provide for the correction of accidental errors in decisions or records of decisions at any time by the Child Support Officer, Child Support Appeal Tribunal or Child Support Commissioner. Accidental errors may be corrected by the body who gave the decision or by a body of similar status, for example, an accidental error made by a Child Support Officer can

be corrected by that Child Support Officer or by another one. The correction will be deemed to be part of the original decision or record, and written notice will be given as soon as practicable to every party to the proceedings.

2.3.3

Setting aside decisions on certain grounds

There will be a provision similar to an existing provision in the Social Security system enabling the setting aside of a decision, on application by one of the relevant parties, on the grounds that it is in the interests of justice to do so AND that a document was not sent, or received in time by the relevant parties or the adjudicating authority, or that the parties were unable to act upon the document because of illness. For example, the non-receipt of the notification that a review was to take place may mean that the party concerned was unable to submit relevant information on time. There will be no right of appeal, however, against a decision to correct, a refusal to correct, or to set aside or a refusal to set aside the earlier decision.

TABLE FOUR: NOTIFICATIONS (see also **Part Four: Information**)

N.B. Throughout this table absent parent and person with care are shown in the singular. Where there is more than one in the assessment, notifications will need to be sent to both.

Notifications will be made immediately as far as that is reasonably practicable.

CIRCUMSTANCES WHEN NOTIFICATION REQUIRED	REASON FOR/CONTENT OF NOTIFICATION	RELEVANT LEGISLATIVE PROVISION
1. MAINTENANCE ENQUIRY FORM (issued to the other parent following receipt of a maintenance application form by the Child Support Agency)	1. Provides notification to the other party (usually the absent parent, but may be also the person with care, where either an absent parent, or a child applicant in Scotland makes the application) of the receipt of an application for child support maintenance. 2. Requests information to enable the making of a maintenance assessment and collection and enforcement. (See Part Four). 3. Provides the first notification from the Child Support Agency of an Absent Parent's liability for child support maintenance and gives a warning about interim maintenance assessments if information is not supplied.	Regulations

2. NOTIFICATION OF THE MAKING OF AN ASSESSMENT	1. Notifies a person with care (and a child applicant in Scotland) of the effective date, amount, method and interval of maintenance payments they can expect. 2. Notifies an absent parent of the effective date, the amount, method and interval of payment he or she must make. 3. Sets out rights of review and how the maintenance assessment was arrived at. 4. Date of the next periodic review.	Regulations
3. NOTIFICATION OF A REFUSAL TO MAKE AN ASSESSMENT	1. Notifies the applicant of a refusal to make an assessment, with reasons for the refusal. 2. Notifies the absent parent, or the other party involved where the Child Support Agency already has made contact with them about the application. 3. Sets out the right of review.	Regulations
4. NOTIFICATION OF THE CANCELLATION OF A MAINTENANCE ASSESSMENT	1. Notifies absent parent, person with care, and if appropriate, a child applicant in Scotland of a cancellation and gives the reasons. 2. Sets out the right of review.	Schedule 1, Paragraph 16(8) of Child Support Act Regulations
5. NOTIFICATION OF A REFUSAL TO CANCEL A MAINTENANCE ASSESSMENT	1. Notifies the applicant of a refusal to make a cancellation and gives the reasons. 2. Notifies the refusal to the other party where they are aware of the application. 3. Sets out the right of review.	Regulations

6. NOTIFICATION THAT A REVIEW IS ABOUT TO TAKE PLACE: a) Section 16 (PERIODIC REVIEW) b) Section 17 (CHANGE OF CIRCUMSTANCE REVIEW) c) Section 18 (REVIEW OF DECISION OF A CHILD SUPPORT OFFICER)	1. Notifies the absent parent, person with care, and in Scotland the child applicant, of the impending review and of the reason for it; gives 14 days notice. 2. For Section 16 and Section 17 reviews, requests updated information to check the present assessment and to make a fresh assessment if required. 3. For Section 18 review, it will include an invitation to submit oral or written comments and give the parties 14 days notice of the review.	Sections 16(2), 17(4), 18(8). Regulations will define the nature of notifications form and to whom they are sent.
7. NOTIFICATION THAT A FRESH ASSESSMENT IS ABOUT TO BE MADE FOLLOWING A SECTION 19 REVIEW (REVIEW AT THE INSTIGATION OF A CHILD SUPPORT OFFICER)	1. Notifies the absent parent, person with care, and in Scotland, the child applicant of the impending new assessment and the reason for it. 2. Provides an opportunity for the parties to disagree with the need for a fresh assessment.	Section 19(3) and Regulations

8. NOTIFICATION OF THE RESULT OF THE SECTION 16,17 OR 19 REVIEW	1. Notifies a person with care (and a child applicant in Scotland) of the effective date, the amount, method and interval of maintenance payments they can expect. 2. Notifies an absent parent of the effective date, the amount, method and interval of payment he must make. 3. Sets out rights of review and how this maintenance assessment was arrived at. 4. Date of the next periodic review.	Regulations
9. NOTIFICATION OF REFUSAL TO REVIEW UNDER SECTION 17	1. Notifies applicant that change of circumstance will not trigger the de minimis level for a change of circumstance review. 2. Notifies right of review under Section 18.	Regulations
10. NOTIFICATION OF RESULT OF A SECTION 18 REVIEW OR REFUSAL TO CARRY OUT SUCH A REVIEW	1. Notifies the relevant parties of the decision with reasons. 2. Advises of the right of appeal to a Child Support Appeal Tribunal.	Regulations
11. NOTIFICATION OF A CORRECTION OF AN ACCIDENTAL ERROR IN THE DECISION OF A CHILD SUPPORT OFFICER/SETTING ASIDE OF A DECISION	1. Notifies the absent parent, person with care and if appropriate, the child applicant in Scotland whether or not the decision has been corrected or set aside. 2. See para 2.3.2 and 2.3.3	Regulations

NOTES: 1. Notifications will also go to legal representatives and people acting for any of the parties, for example, under a power of attorney. Notifications may also be required by the courts, for example, when there is a court order for the same children. 2. Special cases: more than one person with care or absent parent: where a maintenance assessment is affected by a change arising in another assessment, all the persons affected will be notified, for example, a change in the number of qualifying children in one family could mean a reassessment for others because the way the absent parent's assessable income is apportioned between the families will change.

2.4

PROCEDURES FOR REVIEWS UNDER SECTIONS 16 TO 19

The word "review" as used in the Act refers to the process of the review, including notifying parties, re-examining the case and, if appropriate, making a fresh assessment. It does not mean the revised assessment or other Child Support Officer decision at the end of the review process.

2.4.1

Notifications

See Table Four (page 79).

2.4.2

Periodical Reviews**Frequency**

Section 16 of the Child Support Act provides for a periodical review of all assessments. It is intended that this will normally be an annual review and regulations will specify that the period after which the assessment will be reviewed will be one year from the effective date of the assessment, unless:-

- a) an intervening Section 17 (change of circumstance) review takes place, resetting the date for the next periodic review. Where a change of circumstance review is carried out under Section 17, the next periodical review will be one year after the effective date of the assessment following the change of circumstance review, or
- b) the assessment ceases to have effect before that date (See paragraph 2.5.1), or
- c) the Secretary of State specifies a different period, for example, where there is good reason to believe the assessment will terminate because a child intends to leave school aged 17 shortly after the expiry date of the 12 month period, or
- d) no further review will take place, for example, if the youngest child will reach 19 one month after the 12 month date.

2.4.3

Change of Circumstance Reviews: Section 17

The new child maintenance system will provide annual reviews of awards which will act upon changes in the circumstances of both caring and absent parents (see 2.4.2 above). However, between the annual reviews, significant changes in circumstance will be dealt with where there has been a request for a review. The Child Support Act (Section 17) provides for a fresh assessment to be made only if the difference between the current maintenance assessment and the amount that would be fixed if a fresh assessment were to be made because of the change of circumstances, is more than an amount prescribed

in regulations. This allows for a "de minimis" rule which will be set out in regulations. It is intended that where one small change is followed by another, they will have the cumulative effect of triggering a review.

2.4.3.1 Level of De Minimis

Regulations will set out a flat rate de minimis level of a £10 per week difference between the current assessment and a revised assessment following the change of circumstances. It is intended that the level will be kept under review and revised when appropriate, as with the earnings and maintenance disregards in Social Security, by amending the relevant regulations.

The de minimis level will not apply where the absent parent's income, because of the change, would otherwise be below the level of his/her protected income after maintenance has been paid. Conversely, if an absent parent has an increase in earnings whilst on protected income, the change can be implemented so that payment of the maintenance requirement can start or increase.

The rule will not apply (a de minimis level of zero) where a new qualifying child who has the same absent parent as the other child(ren) is born or comes to live with the person with care.

Change of Circumstances Examples:

Example 1

The maintenance requirement is £63.25. Peter, the absent parent, is single, and has gross earnings of £185 per week, and pays rent of £40 per week. His maintenance assessment is £30.97.

His gross earnings increase by £25 per week, giving him £16.50 more net income per week and his ex-wife asks for a change of circumstance review. The maintenance assessment increases by £8.25 to £39.22. The de minimis £10 rule would mean the increase would not be implemented. The assessment would be reassessed at the next periodic review or change of circumstance review if the changes cumulatively result in a £10 change in the assessments.

Example 2

The maintenance requirement is £69.65. Margaret, the person with care, has earnings and assessable income of £19.88. The absent parent, Arthur, has remarried and has a natural child and a step-child. Arthur's gross earnings are £270 a week, net £205.95 and his assessable income is £77.35. His maintenance assessment is £38.68 per week, but "protected income" reduces this to £17.71.

He gets an increase in earnings of £20 gross, net £13.20, and writes to the Child Support Agency about his payments. His maintenance assessment increases to £45.28, but "protected income" still has a part to play, reducing the maintenance actually payable to £29.59. This new amount is £11.88 more than he was paying: the de minimis rule will not apply, and the change will be implemented immediately. Arthur keeps £1.32 of his net pay increase.

Example 3

The maintenance requirement is £65.65. The absent parent, David, has remarried, and both he and his wife work. They have no children. David's annual salary is £26,000, his wife's £14,000. David's assessable income works out at £208.90 per week, which allows him to meet the maintenance requirement of £65.65 and pay additional maintenance of £19.40, making £85.05 altogether.

He has a 10% increase in salary and his ex-wife asks for a review. His weekly net income has increased by £37.50, lifting his assessable income by the same amount. Because he was already paying additional maintenance, the extra maintenance now due is 25% of the increase (£9.38) making £94.43 due altogether. The de minimis rule of £10 means payment of this increase would not be required. The amount payable would be reassessed at the next periodic review or at a further change of circumstance review if the cumulative effect of the changes triggers the de minimis level.

Example 3A

David's firm goes on to a four day week, and his salary is cut by 20%. His assessable income reduces to £163.90 a week and calculation of his maintenance comes to £73.80. His current maintenance assessment is still £85.05 and if he applies for a change of circumstance review a new assessment for the lower amount will be made as the difference between the two assessments is more than the £10 de minimis level.

2.4.4

Reviews of Decisions of Child Support Officers: Section 18 reviews

Section 18 of the Act provides that a person may apply to the Secretary of State who must arrange for the case to be reviewed by a different Child Support Officer to the one who made the original decision. The right to a review applies to the following decisions:

- refusal to make an assessment
- refusal to review a case on a change of circumstances
- current assessment
- cancellation of an assessment
- refusal to cancel the assessment
- amount of arrears outstanding or the calculation of over or under payments

2.4.4.1 Application for the review

Applications for a review must be in writing and contain the reasons for the request. Applications will only be accepted if:

- they are signed by the person wishing to have a review
- or
- the request is made by a representative (other than a legal representative) acting on behalf of the person applying for the review and it is accompanied by a letter or note from that person clearly stating that the representative is acting on their behalf
- or
- the request is made by the person's legal representative

2.4.4.2 Time Limits

The Child Support Act does not contain any specific time limits within which a review must be requested. However, there will be no automatic back-dating if the assessment is revised on review where the request to review the current assessment is received outside a 28 day time limit (unless it is received outside the limit but the Secretary of State decides to treat it as received within the limit) - see Table Five (on effective dates) on page 89.

Regulations will introduce time limits where a review is requested of a decision to:

- refuse to make an assessment;
- refuse to carry out a change of circumstance review;
- cancel an assessment; or
- refuse to cancel an assessment.

Regulations will specify that such reviews must be requested within 28 days of the notification of the original Child Support Officer's decision. The 28 days will be counted from two days after the notification was sent out from the Child Support Agency. Applications for a review will be considered outside the time limit if the Secretary of State accepts there was good reason for the delay in applying (for example, a postal strike, working abroad, illness). There will be procedural guidance about what constitutes a good reason.

2.4.4.3 Other Procedures

- a) Multiple review requests will, as far as possible, be treated as a single request. Where, say, both parents apply for a review before the Child Support Officer has sent out the review notice, the applications will be considered together (and the notice will contain the reasons of both parties). If an application is received from another party once a notice has been issued, the person will be advised that a review is

already under way but that their reasons for the request will be taken into account as part of that review. If a request is received once a review has been completed, the request will be treated as an appeal.

- b) **When conducting the review** the Child Support Officer will be able to ask for any new evidence he thinks is appropriate to ensure that the assessment is correct. This will include asking for any (or all) of the parties to be interviewed. Parties involved in the review will also have the right to request a personal interview. (This will be covered in procedural guidance).

2.5 **TERMINATIONS**

The circumstances in which an assessment will or may terminate are set out in Schedule 1 (paragraph 16) of the Child Support Act.

2.5.1 The circumstances when a maintenance assessment will cease to have effect (ie terminate automatically) are:

- a) on the death of the absent parent or person with care
- b) when there are no longer any qualifying children, for example, because they are too old or they have died
- c) when the absent parent ceases to be the absent parent of the qualifying child or all the qualifying child, for example, on adoption
- d) when the absent parent and person with care have been living together for 6 months
- e) when a new maintenance assessment is made.

2.5.2 Cancellation of an assessment (ie the Child Support Officer decides that the assessment should be terminated) may occur:

- a) at the request of the applicant who had voluntarily applied for a maintenance assessment (under Section 4 or 7)
- b) at the request of the applicant who had been required to apply for an assessment (under Section 6) when the Child Support Officer is satisfied the applicant is no longer receiving benefit or the Secretary of State no longer requires him/her to authorise him to take action under the Act
- c) when the person with care ceases to be the person with care for some or all of the qualifying children

- d) in accordance with regulations where at any time a maintenance assessment is in force but it is no longer within the jurisdiction of the Child Support Officer to make it, and there is no other reason to terminate (otherwise it will continue until there is a reason to cancel or it ceases to have effect). (See paragraph 8.3.1)
- e) where the absent parent and the person with care both request the Child Support Officer to cancel the assessment and the Child Support Officer is satisfied that they are living together.
- f) where the person with care, absent parent or qualifying child ceases to be habitually resident or where maintenance orders in the United Kingdom comes into effect for a qualifying child. (See paragraph 8.3).

2.5.3 Notifications of Cancellations

See Table Four on page 79.

2.6 EFFECTIVE DATES

The effective date determines when a maintenance assessment will come into force, whether on a new application, on an annual review, on a review initiated as a consequence of a change of circumstances, or any other type of review or on the termination of an assessment. The effective date need not be the same as the date on which the assessment is made nor the date from which payment will be required. It does, however, determine the start of liability. The Child Support Act specifically allows the effective date to be earlier than the date the assessment is made (Schedule 1 paragraph 11(2)), but the precise details are not set out on the face of the Act. Different circumstances will require different effective dates. These are summarised in Table Five on page 89.

The effective date is also the date used for calculating maintenance according to the circumstances of the parents current at that date. In the case of the first assessment, the effective date will be the start of the first weekly maintenance period. The maintenance date is the date from which maintenance will be due and the maintenance payment will last until the next maintenance date, i.e. the maintenance dates will be set by the effective date of the first assessment and occur at weekly intervals. At subsequent reviews, the effective date will again be the date used for calculation and liability purposes, but payment will not be expected until the next maintenance date. This will ensure that assessments do not cover part-week periods.

TABLE 5: EFFECTIVE DATES

<u>NEW CASES</u>	Effective date usually the date of receipt of the application for maintenance by the Child Support Agency. Except where: (i) there is an Income Support claim (see paragraph 2.2.5(c)) (ii) there is an existing court order (to ensure absent parent will not be liable for maintenance under a court order and an assessment).
<u>INTERIM MAINTENANCE ASSESSMENTS</u>	Seven days after the issue of the notice of the interim maintenance assessment to an absent parent. (See paragraph 2.7.3.).
<u>PERIODIC REVIEWS</u>	Normally one year after the first assessment or last periodic or change of circumstance review. Periodic reviews will not be made, for example, when the only qualifying child will cease to be a qualifying child within a month of the review date.
<u>CHANGE OF CIRCUMSTANCE REVIEWS</u>	Date of receipt of the request for a review unless the actual date of change is later, in which case it will be the date of change.
<u>REVIEWS AT THE INSTIGATION OF THE CHILD SUPPORT OFFICER</u>	Date of notification of the fresh assessment <u>unless</u> official error or misrepresentation has occurred. Where the Child Support Officer is rectifying a clear and unambiguous official error or there has been misrepresentation it will be necessary to go back to the effective date of the assessment under review or, if later, the date of the official error or misrepresentation.

<u>REVIEWS OF DECISIONS OF CHILD SUPPORT OFFICERS</u>	Either a) the date of receipt of the request for a review if the request is received more than 28 days after the notification of the assessment, or b) the date of the original assessment if the request is within 28 days or the Secretary of State is satisfied that there was good cause for delaying applying for a review, examples include illness or absence on business abroad. N.B. Changes of circumstances may also be taken into account during these reviews if a new assessment is made. The normal rules apply.
<u>TERMINATIONS</u>	Termination of an assessment can come about in two ways: a) it may cease to have effect b) a Child Support Officer may cancel the assessment. The effective dates are: For an assessment ceasing to have effect: the date on which the relevant event occurred. Where cancellation is requested: the date of receipt of request for cancellation, except where the absent parent and person with care are living together when it is determined by the Child Support Officer. Where the person with care ceases to be the person with care: the date of change of circumstances. Where a court order is made: the date the court order takes effect.
<u>MISREPRESENTATION OR OFFICIAL ERROR</u>	The date of the original assessment or notification where there has been misrepresentation or official error, or a later date, if the misrepresentation is a failure to disclose information about a subsequently occurring event, for example, a child leaving the care of the person with care.

2.7 INTERIM MAINTENANCE ASSESSMENTS

2.7.1 Interim Maintenance Assessments are provided for by Section 12 of the Child Support Act 1991. Normally interim maintenance assessments are treated as if they are an ordinary maintenance assessment unless regulations specify otherwise.

2.7.2 The Act makes it clear that, where a Child Support Officer does not have enough information to make a maintenance assessment under the formula, an interim assessment may be made. Since the aim, where possible, is to make a full maintenance assessment, the imposition of interim maintenance assessments will be limited to cases where information is deliberately withheld by an absent parent. The threat of an interim maintenance assessment, rigorously enforced, should be a strong incentive to absent parents to provide the information necessary to lead to the calculation of an assessment under the formula.

2.7.3 Much of the detail for making interim maintenance assessments will appear in procedural guidance provided for the officers of the Child Support Agency. Regulations will cover:

a) Effective date of an interim maintenance assessment and the warning period

The Act provides for interim maintenance assessments to be effective only after a prescribed period. This period will be seven days from the issue of a notice of an interim maintenance assessment to an absent parent. Where an absent parent is unable to comply with the request for information, he will be able to apply to have the decision of the Child Support Officer to make an interim maintenance assessment set aside. The power to set aside decisions is described in paragraph 2.3.3. The circumstances in which it may be appropriate for the Child Support Officer to set aside the interim maintenance assessment will be contained in procedural guidance.

b) The level of an interim maintenance assessment

The level at which the interim maintenance assessment is set will reflect the needs of the person with care's family and the importance of creating a substantial incentive for the absent parent to provide the information within a reasonable timescale. Information contained in the application form is sufficient to calculate the maintenance requirement and the level of interim maintenance assessment will be set at twice the maintenance requirement.

c) **Appeal Rights**

Absent parents will have a right of appeal against the imposition of an interim maintenance assessment. In order to restrict the scope for vexatious appeals, there will be no right of appeal against the level of the interim maintenance assessment. There will, however, be a right of review and appeal against the refusal of the Child Support Officer to make a full formula assessment on the grounds that the Child Support Officer did have enough information to make a formula assessment.

d) **Payments of Formula Assessments Where They Exceed the Interim Maintenance Assessment**

The agency will continue to seek information from absent parents so that an assessment under the formula can be made. For a minority of absent parents, the interim maintenance assessment will be less than an assessment calculated under the formula. This may provide an incentive to retain an interim maintenance assessment. The Child Support Officer will therefore have the power to replace an interim maintenance assessment with a formula based assessment when information is received which justifies a formula based assessment higher than the interim maintenance assessment. The higher liability will thus be back-dated to the effective date for new cases (the date of receipt of the maintenance application form) and continue right throughout the period where the interim maintenance assessment was in force. Where a formula based assessment would be lower than the interim maintenance assessment, a refund of the excess will not be sought from the person with care nor made to the absent parent.

- 2.7.4 Interim maintenance assessments will in other respects be treated as any other maintenance assessment. They will be collected and enforced in the same way and will be subject to the same fees and incorrect payment procedures. They will also attract the same maintenance disregard in Family Credit, Housing Benefit and Community Charge Benefit as formula based assessments. Specific provision in regulations will not be needed for this purpose.

PART THREE: THE APPEALS SYSTEM - TRIBUNALS AND COMMISSIONERS

3.1 APPEALS TO CHILD SUPPORT APPEAL TRIBUNALS

Background

Appeals to a Child Support Appeal Tribunal will involve decisions of Child Support Officers which have already been the subject of a Section 18 review by a different Child Support Officer. These decisions are listed in paragraph 2.4.4. Schedule 3 of the Child Support Act lays down some of the workings of Child Support Appeal Tribunals (CSATs): for instance, that they will consist of three people (not all the same sex) including a legally qualified chairman. In this they will be similar to Social Security Appeal Tribunals (SSATs). Although CSATs will differ from SSATs, their basic procedural framework - the subject of these regulations - will be based on the well understood model of the SSATs. Consequently, the regulations will draw heavily on the Social Security Adjudication Regulations 1986 (SI 1986/2218). Within this framework, CSATs will develop their own relevant procedures.

Provisions already made

Section 21(2) of the Act allows the Secretary of State to make "such regulations with respect to proceedings before child support appeal tribunals as he considers appropriate". Section 21(3) provides examples of types of provision he may wish to make in regulations.

Child Support Appeal Tribunal Procedures

- 3.1.1 Appeals will be made direct to Child Support Appeal Tribunals and not via the Agency.
- 3.1.2 Appeals must be made in writing and give some indication of why they are being made. Where it will help to reach a decision, chairmen of tribunals will have the power to ask for further information about an appeal.
- 3.1.3 Generally, CSAT chairmen will be able to decide the procedure they follow.
- 3.1.4 It will be possible to make enquiries of the chairman of a tribunal before an appeal is heard, for instance, what documents ought to be brought along.
- 3.1.5 Appellants will be able to withdraw their appeals before they are heard. At the hearing, the chairman's consent to withdrawal will be required.
- 3.1.6 Tribunals will hold oral hearings, but there will be no obligation on parties to attend. They may do so and put their point of view. At least 10 days notice of the time and place of the hearing will be given. Certain other people will always be able to attend hearings - for instance, other CSAT chairmen or

Child Support Agency officials undergoing training. They will not be allowed to take an active part in the hearing.

- 3.1.7 Tribunals will have power to postpone or adjourn their hearings. Their decisions will be decided by a majority, will be recorded in writing and will be notified to the parties.
- 3.1.8 In certain circumstances their decisions can be set aside - for instance, where relevant documents were not received or parties not told about a hearing. There will be a general power to set aside decisions where the interests of justice require it. There will also be the power to correct accidental errors (slips of the pen). These powers will be exercised by tribunals.
- 3.1.9 There will a time limit of 28 days for bringing an appeal (from the date of notification of the outcome of the review), which CSAT chairmen will be able to can extend in particular cases. In deciding whether to do so they will be required to have regard to all the circumstances and in particular to whether an appeal could have been brought within the time limit.
- 3.1.10 CSAT chairmen will have a power to strike out appeals when the parties fail to pursue the appeal, to require people to attend or to produce documents, and to require evidence to be given on oath.
- 3.1.11 It will be open to a party to an appeal to appoint a representative, whether legally qualified or not, and the representative will have the same rights and powers as the party. However, chairmen will have power to exclude representatives if, in their view, there are good and sufficient reasons for doing so.
- 3.1.12 Hearings will be in public except where the chairman of a tribunal is satisfied that due to disclosure of intimate personal or financial circumstances it is just and reasonable to hold them in private. Addresses will not be disclosed without consent.
- 3.1.13 Where an appeal is allowed, the chairman of the Child Support Appeal Tribunal will refer the case with directions as to the fresh assessment to the Secretary of State who will arrange for a fresh assessment to be made by a Child Support Officer. As with a Section 18 review, the effective date will be the effective date of the original assessment being appealed against.

3.2 APPEALS TO CHILD SUPPORT COMMISSIONERS

Provisions already made

Powers to regulate appeals to Child Support Commissioners are in sections 22(3) and 22(4), section 24(6)(a) and 24(7) of the Act. Schedule 5 is also concerned with Child Support Commissioners. Procedural regulations on Child Support Commissioners will, with minor changes, be based on the Social Security Commissioners Procedure Regulations 1987 (SI 1987/214).

Child Support Commissioner Procedures

- 3.2.1 The proposal to derive the Child Support Commissioner procedures from those of the Social Security Commissioner, means that the same detailed rules about applications for leave to appeal, determination of applications, notices of appeal, time limits for appealing and acknowledgments and notifications will apply. Broadly, this means:
- a) applications for leave to appeal to a commissioner will go to the CSAT chairman within 28 days of the notification of the appeal decision.
 - b) applications for leave will go to a Commissioner where there has been failure to apply to a CSAT chairman within the time limit;
 - c) notices containing a name, address and contact point for applicants, along with grounds, must accompany applications for leave to appeal;
 - d) applicants will be notified in writing of the outcome of their application;
 - e) appeals will be brought by written notice containing the appellant's name and address (where appropriate), the date on which leave to appeal was granted, grounds of appeal and a contact point;
 - f) notice of appeal must be sent to the Commissioner within 6 weeks of leave to appeal being granted. The commissioner will have discretion to accept late appeals;
 - g) the Commissioners will acknowledge receipt of appeals and notify other parties of them.
- 3.2.2 Similar rules on written observations, observations in reply, directions, requests for oral hearings and oral hearings themselves, representation, summoning of witnesses, postponement and adjournment, withdrawal of applications for leave to appeal and withdrawal of appeals and on irregularities will apply also:

- a) any party to the appeal may make written observations on receiving notice of an appeal. He or she has 30 days to do so. Within 30 days of receiving these observations any party may then make written observations in reply.
- b) Commissioners will have wide powers to issue directions, including directions for further information.
- c) Commissioners will be able to determine appeals without oral hearings. Where an oral hearing is requested it will be granted unless the Commissioner decides the appeal can be determined without one.
- d) At oral hearings, a party may appoint a representative or conduct their own case.
- e) Where there is to be an oral hearing, parties must be given reasonable notice of it; it will be conducted in public (unless disclosure of intimate personal or financial circumstances or public security dictates it should be private); the person making the appeal, the Child Support Officer, the Secretary of State, and any other person with leave of the commissioner will be able to attend, and be entitled to be heard. They may address the Commissioner and, with leave, call witnesses and give evidence. Members of the Council on Tribunals and the Scottish Committee of the Council on Tribunals may also attend.
- f) Commissioners will have the power to summon witnesses to attend.
- g) Commissioners will have the power to postpone or adjourn hearings.
- h) It will be possible to withdraw an appeal. This may require the approval of the Commissioner, and there will be power to reinstate withdrawn appeals.
- i) Failure to comply with these procedural regulations will not of itself invalidate proceedings. Commissioners may waive such irregularity or take steps to remedy it.

3.2.3

Finally, the regulations will reproduce the rules on determinations and decisions of a Commissioner, correction of accidental errors, setting aside, delegation of functions, manner of service and appeals to the courts (Court of Appeal or in Scotland, the Court of Session):

- a) determinations and decisions of Commissioners will be in writing and signed by them;
- b) there will be power to correct accidental errors (slips of the pen);

- c) there will be a general power to set aside decisions where this is in the interests of justice (documents not received or parties notified, for instance) - see paragraph 2.2.3.
- d) the Commissioners will be able to delegate certain functions, including summoning witnesses or making certain directions;
- e) posting to a party's ordinary or last known address will be sufficient service, which will be deemed to have been given on the day of posting. Documents for the Commissioners should be sent to their offices.
- f) applications for leave to appeal from the decision of a commissioner should be made within 3 months of the notification of the decision and will generally be determined by the Commissioner who made the original decision.

PART FOUR: INFORMATION REQUIREMENTS

4.1 INTRODUCTION

4.1.1 Policy Intention and Provisions Already Made

The Child Support Agency will have to collect sufficient information to identify and trace the absent parent, assess the amount of maintenance payable and to ensure collection and, if necessary, enforcement of the maintenance assessment.

4.1.2 Most of this information will be obtainable from either the absent parent or the person with care or a child applicant in Scotland, but it may be necessary to seek information from other sources such as employers, local authorities, or the Inland Revenue. Sections 14(1) (Information required by Secretary of State) and 57(1) (Application to Crown) provide authority to make regulations about information gathering. Disclosure of information to the Child Support Agency is also covered in Sections 4, 6 and 7.

4.1.3 There will be circumstances where it is necessary to disclose information. Disclosure by the Agency is covered by Sections 14(3), 50(5) and 50(7)(d) and may be to Child Support Appeal Tribunals, Child Support Commissioners, the Courts, solicitors and to the Secretary of State (for example, for Benefit Act purposes). What must be disclosed, to whom, and when it should be disclosed is discussed in detail later in paragraphs 4.2 onwards.

4.1.4 This Part summarises the Child Support Agency's information requirements. Some material found in other parts of this document is repeated in order to minimise the need for cross-referencing,

COLLECTION OF INFORMATION

4.2.1 Information needed to deal with a maintenance application and make a maintenance assessment

Application for a maintenance assessment can be made under Sections 4, 6 and 7 of the Child Support Act. Information about the circumstances of the qualifying child or children and both parents will be needed to decide whether an application has been properly made and to carry out the calculation. This information will primarily be provided by the person making the application and the parents themselves, but it may also be necessary to obtain information and possibly supporting evidence from third parties. The information needed will be much the same whether the application is made under Section 4, 6 or 7.

The Child Support Act contains a number of powers to require information:

- a) Sections 4(4), 6(9) and 7(5) provide for the person making the application to comply as far as reasonably possible with regulations to provide the Secretary of State or the Child Support Officer with the information needed to trace an absent parent, assess the amount of maintenance the absent parent should pay, and enable that amount to be recovered from the absent parent. Where the application is under Section 7, the requirement applies to the person with care of the child and the absent parent as well as the child who made the application.
- b) Sections 4(7), 6(10) and 7(8) provide for regulations to set out when the above obligations can be waived or shall not apply. It is not intended to use these powers at present.
- c) Section 14(1) provides for the making of regulations requiring the information or evidence needed for a determination of an application for child support maintenance. It also enables the specifying of persons who must provide the information. This enables information to be sought from persons other than those specified under Sections 4, 6 and 7.
- d) Schedule 2 provides for disclosure of certain information by the Inland Revenue for the purpose of tracing the current address or employer of an absent parent. This information will only be sought in cases where other methods have failed. The power in the Act does not involve the making of any regulations.

4.2.2 The paragraphs below describe the sort of information that will be needed and from whom in order to complete a maintenance assessment. The arrangements will recognise that not all of the information will be relevant in all cases.

4.2.3 **Information needed to check that a maintenance assessment is properly made**

A maintenance assessment is properly made where there is a qualifying child, an absent parent and a person with care. Application for an assessment can be made by the person with care, the absent parent and in some cases by the qualifying child. More than one person may be able to make an application and it will also be necessary to decide whether applications can be combined and treated as one. Information will therefore be needed from the person making the application as follows:

- where the child has his home; who usually cares for the child; whether a parent lives in the same household as the child; details of any residence order or any person who has a right to custody of the child

- whether the person making the application is a person with care or an absent parent
- in the case of an application under Section 7, whether the child concerned is habitually resident in Scotland and the child's date of birth
- when a child ceases to be a qualifying child and the reason for this - for example, child reaching age 19; dying; marrying; leaving school; leaving the UK; or where the absent parent leaves the United Kingdom or dies.
- information to check that the applicant is eligible - for example, not a foster parent.

4.2.4

Information needed to make an assessment

A maintenance assessment will determine the amount of the maintenance requirement and at the ability of an absent parent and parent with care to meet that maintenance requirement and any additional maintenance. The Secretary of State will require information as follows:

a) **from the person making the application (and the person with care if a different person), and the absent parent on**

- names and dates of birth of qualifying children; marital status of parents; whether the children are still at school; income other than earnings
- name and address of absent parent(s) of each qualifying child, plus any other information to help trace them (such as employer's name and address)
- name and addresses of employers: details of earnings or other payments, tax, national insurance and pension contributions covering the 5 weeks (if weekly paid) or 2 months (if monthly paid) preceding the effective date of the assessment; such other period needed to determine the standard level of earnings to be applied. Where information is being supplied about employers, the party should also supply any reference number to help with identification
- income from self employment - details of gross income over past year and expenses, tax, national insurance and any pension contributions
- details of type, source and amount of any other income plus any reference number for identification purposes (e.g. account name and number)

- details of type and amount of mortgage payments or rent payments and number of non dependents in the household, if boarders or sub-tenants whether costs include meals
 - details of all persons living in the parent's family and their relationship to the parent; names and ages of children and whether still at school; income of partner and children (including maintenance payments other than from the absent parent concerned in the assessment); details of other parents of children (if not the partner); whether child or partner is disabled (ie would qualify for the Disabled Child Premium or Disability Premium respectively if Income Support were claimed).
 - whether parent or partner is a carer in receipt of Invalid Care Allowance (or would be but for receipt of an overlapping benefit)
- b) from a parent with care
- if paternity is disputed, information about the relationship with the alleged absent parent and the circumstances of conception and any supporting information needed for proceedings under Section 27 or 28 of the Child Support Act
 - Where there is another person who also is a person with care or provides a home for the child - information about the arrangements for example, the name and address and periods spent with each
- c) from the absent parent
- information about the amount of maintenance paid for the child or children under a court order made before the application to the Child Support Agency
 - details of any other payments of child maintenance made by the absent parent
- d) from the employer of an absent parent or parent with care (where needed - for example, because payslips are not available or the absent parent does not co-operate in supplying the information)
- details of gross earnings and other payments and any tax, national insurance or pension contributions made in connection with the employment; address of parent; expected date of commencement or termination of employment plus projected future earnings (where a deduction from earnings order is to be considered)

e) **from a local authority (needed where there is a possibility that a child is in care, or where parties are unable to supply copies of relevant notices of determination)**

- whether a child is looked after by the local authority (or the child is under supervision in Scotland) and the arrangements, including any placement with a voluntary organisation or foster parent. (Children are excluded from the Child Support scheme if they are looked after by a local authority).
- a copy of the notice of determination of an award of Housing Benefit or Community Charge Benefit, to assist the calculation of in exempt or protected income

f) **from a court**

- notification of a relevant court order (see Part 8)
- details from a court order - names, amount and method of payment (in the form of certificated copies of the orders supplied by the courts)
- employer's address from an Attachment of Earnings Order
- for Scotland see paragraph 4.2.10.2

4.2.5 The Secretary of State will be empowered to ask for supporting evidence, in a specific form for any of categories of information set out above, from whomever is required to provide the information, and to set a time limit for providing that information.

4.2.6 **Information needed for the termination of an assessment**

It is intended that the person with care will be required to notify the Child Support Agency of the following:

- a) whenever the parent with care and the absent parent have been living together for 6 months
- b) whenever the person with care ceases to be habitually resident in the United Kingdom
- c) whenever the person with care ceases to be the person with care
- d) whenever the child ceases to be a qualifying child, for example, reaching age 19; dying; marrying; leaving school; leaving the United Kingdom; when there is no longer an absent parent (for example, because the absent parent is now living together with the parent with care again); or the child is adopted.

4.2.7 **Information required for timing, method and distribution of payment**

4.2.7.1 Sufficient information will be needed to decide about: payment method; the timing of that payment; and the distribution of that payment. This information could also be needed for enforcement purposes, in particular, when considering garnishee action. As well as information about any preference the parties may wish to express, information will be required as follows:

- a) name and address of absent parent's/person with care's bank/building society
- b) sort code number
- c) type of account
- d) account number
- e) account name

(The term "bank/building society account" covers all accounts from which money can be deposited and withdrawn).

4.2.7.2 In determining frequency of payment, the Secretary of State will need to take account of the following:

- f) the interval at which the absent parent receives his salary, commission, or drawings from a business (including the voting of directors' bonuses)
- g) the normal budgeting arrangements for the person with care (ie. weekly, monthly etc.)

4.2.7.3 It is intended to allow for information to be sought about whether payments of maintenance have been made. For example, if the person with care alleges non-receipt of a maintenance payment, both parties will be required to provide such evidence as the Secretary of State considers reasonable to support their case. These may include bank statements or receipts.

4.2.8 Information needed for Deduction of Earnings Orders

4.2.8.1 Requirements on an absent parent

There will be specific occasions when information will be required for the operation of deduction from earnings orders. The absent parent will be required to supply the following:

- a) the name and address of any person who pays his or her earnings;
- b) the details of the earnings;
- c) enough details to enable the absent parent to be identified by the employer(s), for example, payroll number;
- d) notification to the Secretary of State, within seven days, whenever he or she leaves employment or becomes employed or re-employed and details of the earnings and anticipated earnings from that employment.

4.2.8.2 Requirements on an employer

A number of requirements relating to the collection of information will be placed on employers:

- a) where a deduction from earnings order (DEO) is served and the liable person is not in his employment or subsequently ceases to be in his employment, to notify the Secretary of State of that fact within ten days of the date of service of the order (or, as appropriate, the end of the employment)
- b) on becoming the absent parent's employer and knowing that a DEO is in force, to notify the Secretary of State that he is the absent parent's employer. This notification is to be made within seven days of his becoming the employer or acquiring the knowledge, whichever is later. In these circumstances, the employer will also be required to provide a statement of the absent parent's earnings and anticipated earnings.

4.2.9 Information needed for enforcement

Commitment to prison

The question of evidence required by the courts when considering an application for a warrant of commitment to prison is a matter for court rules. It is likely, however, that a statement in writing from the absent parent's employer, or someone acting on the employer's behalf, will be required; and that this will be treated as evidence of any wages (of any amount and for any

period) paid to the liable person during the proceedings to consider an application to commit to prison.

4.2.10 **Information needed from the courts**

4.2.10.1 Courts in England and Wales will be required to provide:

- a) information from a Court order (by supplying a certificated copy of the order):
 - * names of the parties
 - * amount to be paid
 - * method of payment (under Maintenance Enforcement Act)
- b) the amount of any payments outstanding (possibly by way of an arrears certificate)
- c) details of any attachment of earnings order if this is being used for payment.

Information given in confidence at proceedings, for example, addresses, will not be required.

4.2.10.2 In Scotland, the onus for providing information to the Child Support Agency will rest on the parties. It is assumed that the applicant to the Child Support Agency will either have a copy of the Court Order (extract decree) in his or her possession, or will be able to apply to the Court for a further copy of the Court Order and will forward it to the Child Support Agency. The copy of the order may contain information on aliment or financial provision for a spouse, but the order will contain no details of payments of maintenance or arrears. Information on these will have to be provided by the parties.

4.2.11 **Information collection by Inspectors**

4.2.11.1 Section 15 of the Child Support Act sets out the powers of inspectors whom the Secretary of State may appoint for the purpose of obtaining information required under the Act. The powers of Child Support Agency's inspectors are closely modelled on those of the National Insurance inspectors of the Contributions Agency as set out in the Social Security Act 1986.

4.2.11.2 There are no regulations to be made under this section, since all the powers appear in the Act itself, but it is envisaged that the procedures will be as follows. Most queries will be dealt with by post or telephone. If there is no response to reminders or the employer requests a visit, an officer of the Child Support Agency will visit the wages section of the employer. It will only be

necessary to use the powers in Section 15(4) if the employer or employee proves unco-operative. Authorisations to act under this section will be restricted to cases where other means of getting the necessary information have failed. A separate authorisation will be given, under the authority of the Secretary of State, for a specified officer to visit a particular employer or self-employed person, and subject to a time limit. This authorisation will only be used where there is no other option.

TABLE 6: INFORMATION: SUMMARY

Who the information is required from	When	Information required
<u>Person making the application</u> (and the person with care or absent parent if different)	On application and for assessment purposes	See para 4.2.4

<u>Person with care</u>	Paternity disputed	* relationship with Absent Parent and supporting information needed for proceedings under Section 27
	Second person with care	* name and address, periods spent with second person with care
	Termination of assessment	* notify Child Support Agency of living together situation of 6 months
	Payment Purposes	* ceases to be habitually resident in UK
		* ceases to be person with care
		* child ceases to be qualifying child
		* name and address of bank/building society if necessary
		* Sort code number
		* Type of account
		* Account number
		* Account name
		* Normal budgeting arrangement

<u>Absent Parent</u>	Court Order in force and is made before application to Child Support Agency Assessment Dispute over payment Payment purposes Deduction from earnings order	* Maintenance payments already made through court order * Any other payments of child maintenance * Any evidence of payment of maintenance eg bank statements receipts * Interval at which salary, commission etc received * Normal budgeting arrangement * name and address of bank/building society if necessary * Sort code number * Type of account * Account number * Account name * name and address of any person paying earnings * details of earnings * details to enable liable person to be identified by the employer * notify Secretary of State within 7 days when he leaves employment or becomes employed
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<u>Employer</u>	Assessment Deduction from earnings order Commitment to prison	* Gross earnings and other payments, national insurance tax or pension contributions, address of parent. Date of commencement or termination of employment plus projected future earnings * Evidence of wages
<u>Local Authority</u>	Assessment	* details of any local authority supervision * copy of notice of determination of Housing Benefit or Community Charge Benefit
<u>A Court</u> FOR SCOTLAND SEE 4.2.10.2	Assessment Payment purposes	On face of a court order:- * name of parties * amount payable * method of payment * payments outstanding * details of any attachment of earnings order

4.3 DISCLOSURE OF INFORMATION

4.3.1 Regulation making powers on Disclosure of Information are contained mostly in Section 14(3), but also in 50(5) and 50(7)(d) of the Act. The regulations will set out clearly the circumstances in which it is necessary to disclose information - what must be disclosed and to whom, and when it should be disclosed. Information held by the Child Support Agency which may be disclosed in some circumstances consists of:

- a) Family circumstances - both of the person with care and the absent parent. This includes: the number and ages of any qualifying or non qualifying children; whether any of the members of the household satisfy the criteria for any of the Income Support disability premiums; and whether the absent parent or person with care is living with a partner;
- b) Income - earned income; other income including income from capital or capital treated as income; and, in some circumstances, the incomes of a new partner and his/her children;
- c) Housing costs;
- d) Any other information taken into account in a Child Support Officer's decision, such as details of shared custody.

4.3.2 Disclosure will be necessary in a number of different circumstances:-

Disclosure to Other Interested Parties

Notice of assessments

4.3.2.1 Each party to a maintenance assessment will be given full details of how the assessment has been calculated. This will include details of: total income (including earnings; other income; and income from capital); housing costs; dependent children; new partner; and information about partners' and children's income as appropriate. Under no circumstances, however, will addresses of parents dependent children or partners, or any information which could allow them to be traced, be revealed to the other parent unless the relevant party has given permission for these details to be disclosed.

Section 18 Reviews

4.3.2.2 The notice that a review under Section 18 is to take place which Child Support Officers will send will contain the full reason for the review.

Disclosure to Appeals Tribunals, Commissioners and the Courts.

- 4.3.2.3 Section 50(6)(d) of the Act provides that information may be passed to tribunals and the courts for the purposes of (or for instituting) any proceedings before them. Further regulatory provision is not needed.

Disclosure to other persons

- 4.3.2.4 The Secretary of State will be able to disclose information to a solicitor acting on behalf of a Child Support Agency client for the purposes of top-up orders, spousal maintenance, or maintenance where the Child Support Agency has no jurisdiction. This will include addresses, income and family details and also whether someone was in receipt of benefit (but not the amount). This information will only be revealed for the purposes of the proceedings. The procedure mirrors the current practice in Liable Relative cases in the local offices of the Department of Social Security.

4.3.3 **Disclosure to the Secretary of State for the Collection and Enforcement of a Liability**

Information will be collected by the Secretary of State so that the Child Support Officer can assess maintenance liability. It will be necessary for the Child Support Officer to refer cases to the Secretary of State for collection and enforcement of the liability. The Secretary of State will be permitted to use information, originally collected for the purpose of assessment, for the further purpose of collection and enforcement of the liability as follow:

- a) items identified in (a) to (d) of para 4.3.1 above;
- b) the absent parent's address;
- c) the name and address of the absent parent's employer;
- d) details of bank/building society accounts.

4.3.4 **Disclosure to the Secretary of State for the purposes of the Benefit Acts**

- 4.3.4.1 Provision will be made for the Secretary of State to use information given for the purposes of the Child Support Act for the purposes of the Benefit Acts. This will include the Child Support Officer's decision and information on which the decision was based, so that an Adjudication Officer can review entitlement to benefit. In particular, details of the Child Support Officer decision in Section 46 (requirement to cooperate) cases will be needed to enable a reduced benefit decision to be implemented, and to enable minimum contributions to be deducted from benefits where Section 43 applies.

4.3.4.2 Provision will be made to permit the Child Support Agency to disclose information to the Benefits Agency as follows:

- a) the amount of maintenance payable to a person with care in receipt of Income Support, Family Credit or Disability Working Allowance so that the Benefits Agency can take account of the correct rate of maintenance in assessing entitlement to benefit. This will apply to both initial and review assessments. It will not, however, remove the need for individuals to report changes in their income to the Benefits Agency;
- b) where the Child Support Agency is monitoring payments for a person with care who is in receipt of Income Support and the absent parent fails to make full payment in a given week. This will facilitate quicker adjustment of the parent with care's benefit entitlement;
- c) information about relevant change of circumstances to the Benefits Agency, and vice-versa. This will ensure that both benefits and maintenance assessments are properly adjusted where appropriate and that customers do not have to report the same fact twice;
- d) information which clearly demonstrates that a client's benefit entitlement is incorrect, so that the Benefits Agency can adjust entitlement accordingly.

4.3.4.3 Similarly, there will be a provision for the Secretary of State to use information given for the purposes of the Child Support Act for the purposes of establishing liability for National Insurance contributions under the Social Security Acts. Such information will be limited to:

- a) the address of a client
- b) details of income, particularly the income of self-employed people.

4.3.5 Disclosure by Employees of the Department

4.3.5.1 It is proposed to follow existing procedure about the disclosure of information to persons undertaking work for the Agency. This information will be made available, subject to the normal conditions of confidentiality, solely for the particular purpose in question (for example, academic research), and it will not be possible to pass it on further except to the researchers who, in turn, will be able to pass the information on only in an anonymous form. Section 50 creates a criminal sanction against unlawful disclosure of information in connection with the Child Support Act by employees. Section 50(5) contains a regulation making power permitting the extension of the list of what is defined as employment. Section 50(5) will be applied to any person who provides, or is employed in the provision of, service to the Secretary of State.

- 4.3.5.2 Section 50(5) will also apply to any person who is employed in the audit of Child Support Agency expenditure or the investigation of complaints.

4.3.6 **The Responsible Person**

Disclosure of information will only be regarded as made with lawful authority by a person other than a civil servant in accordance with his official duty if it does not contravene any restriction imposed by "the responsible person", or it is in accordance with an authorisation given by "the responsible person". Section 50 (7) (a) to (c) already defines "responsible person" as the Lord Chancellor, the Secretary of State or any person authorised by the Lord Chancellor or the Secretary of State.

PART FIVE: FAILURE TO COMPLY WITH A REQUIREMENT TO AUTHORISE THE RECOVERY OF MAINTENANCE AND PROVIDE INFORMATION

5.1 INTRODUCTION

- 5.1.1 Section 6 of the Child Support Act provides that when Income Support or Family Credit or any other benefit of a prescribed kind is paid to or for a parent with care of a qualifying child, that parent may be required to authorise Secretary of State to take action to recover maintenance. As part of this authorisation, parents will be expected to provide whatever information they have to help trace the absent parent and assess his/her ability to pay maintenance. Authorisation will not be required if giving it would put the parent with care or a child living with her at risk of harm or undue distress. Where parents wish to proceed despite such risk, they will be able to do so.
- 5.1.2 Where parents with care refuse to provide the authorisation required, and do not show reasonable grounds for believing that there is a risk of harm or undue distress to them or a child living with them, Section 46 makes provision for a reduction in the amount of benefit. Details of the reduction will be set out in regulations. A decision about reduction will not be made until the parent has been given full opportunity by both the Secretary of State and a Child Support Officer to consider her decision or to provide information about a possible risk. The statement of the parent with care will normally provide sufficient evidence unless it is self-contradictory or inherently implausible. There will be a period of 6 weeks for consideration before the case is referred to a Child Support Officer. This period will be specified in guidance rather than in regulations.
- 5.1.3 The following paragraphs describe the Government's proposals for regulations under Sections 6 and 46 of the Child Support Act.

REGULATIONS UNDER SECTION 6

- 5.2.1 As announced during the passage of the Child Support Act, the requirement to authorise action to recover maintenance will apply where Disability Working Allowance is claimed as well as where Income Support or Family Credit is claimed.
- 5.2.2 A description of the range of information that a parent applying for maintenance under Section 6 will be expected to provide for a maintenance assessment is contained in Part Four of this consultation document. The information needed may vary according to individual circumstance, but it will be of the same nature as that required from a parent with care making an application under Section 4.

5.3 REGULATIONS UNDER SECTION 46

- 5.3.1 Where, despite a period for reflection, a parent has refused to comply with a requirement to authorise recovery action or to provide information, and there are no reasonable grounds for the Secretary of State to believe that there would be a risk of harm or undue distress, the case will be referred to a Child Support Officer who will consider the position afresh. If the Child Support Officer considers that there are reasonable grounds no further action will be taken. If he considers that there are not reasonable grounds, he will write to the parent giving notice requiring him/her to provide the authorisation or the information needed by the end of a period specified in the notice. This period will be two weeks beginning on the third working day after the despatch of the written notice.
- 5.3.2 If, following this period, the Child Support Officer decides that reasonable grounds have not been shown for believing that complying with the requirement would bring a risk of harm or undue distress to the parent or a child living with him or her and the authorisation or information is still refused, he will issue a "reduced benefit direction". A reduced benefit direction will be binding on the benefit adjudication officer. The direction will provide for the benefit concerned to be reduced by the amount and for the period specified. The amount of the reduction will be set at 20% of the Income Support adult (over 25) personal allowance for a period of 26 weeks; thereafter the reduction will be set at 10% of that allowance for a further 52 weeks.
- 5.3.3 A number of factors may affect the working of this provision in practice. These are described in paragraphs 5.4 and 5.5 below.

5.4 AMOUNT OF THE REDUCTION

- 5.4.1 The amount of the reduction will be increased as the amount of the allowance on which it is based is increased. Thus, when the amount of the Income Support personal allowance is increased, that increase will be reflected in a larger reduction from the next suitable date. For Family Credit and Disability Working Allowance this will be the first point at which it is possible to make a change, i.e. on the next award. (This will apply in general to changes for those on Family Credit and Disability Working Allowance).

Example

*At 1990/91 rates the amount of the reduction would be
20% of £36.70 - £7.34 per week. (10% would be £3.67 per week)*

*In April 1991 the Income Support personal allowance rate increased to
£39.65, the 20% reduction would rise to £7.93 per week. (10% would become
£3.96 per week)*

5.4.2

If applying the full amount of the reduction would reduce the amount of benefit below the minimum payment level for that benefit, or would remove entitlement to benefit altogether, the amount of the reduction will be abated by the benefit adjudication officer to leave the relevant minimum amount in payment.

The minimum amounts are:

Income Support	- 10p a week
Family Credit/Disability Working Allowance	- 50p a week

The abated reduction will replace the reduction that would otherwise apply for the week(s) concerned; there will be no carrying forward of the amount abated.

Example

Family Credit is in payment at £8.30 a week throughout

*Amount of reduced benefit
direction (April 1991 rates) £7.93 for first 26 weeks
£3.96 for 52 weeks*

£8.30 reduced by £7.93 would leave only 37p; since this would be less than the minimum amount (50p) the reduction would be abated to £7.80 leaving Family Credit of 50p a week in payment.

After 26 weeks reduction would fall to £3.96

£8.30 reduced by £3.96 leaves £4.34 to be paid; since this would exceed the minimum payment no abatement would be required. The reductions in this example would have been:

*£7.80 for 26 weeks
£3.96 for 52 weeks*

5.5 PERIOD OF REDUCTION

5.5.1

Where a reduced benefit direction is issued, the change in benefit will be made at the next suitable date after the benefit adjudication officer's decision. There may also be circumstances where a parent with care receives a modified applicable amount of Income Support for example, because he/she is in a residential care or nursing home. Implementation of the reduction will be deferred in this situation; it will commence as soon as the ordinary rates apply.

- 5.5.2 Once the period of a reduced benefit direction is completed, no further direction will normally be issued. However, if a new qualifying child subsequently joins the parent's family (for example, birth of a new child or the return of a child who has lived elsewhere for a period), a new question of authorisation will arise. The Secretary of State and Child Support Officer will consider the new question, and, if appropriate, a further reduced benefit direction will be issued. If the new child joins before the period of the reduced benefit direction expires and a further reduced benefit direction is appropriate, the first direction will be terminated. It will be replaced by a new direction for the usual 26 weeks higher rate and 52 weeks lower rate reductions.

- 5.5.3 Where a parent leaves benefit before the completion of the full period of a reduced benefit direction, the direction will be suspended. If he/she (or his/her partner) subsequently reclaims benefit, the unexpired portion of the direction will apply unless the required authorisation or information is provided, or the Child Support Officer is satisfied that there are reasonable grounds for considering there would be a risk of harm or undue distress to the parent or a child living with him or her.

Example:

Lone parent leaving and returning to Income Support.

Ann has been subject to a reduced benefit direction for 24 weeks, during which benefit was reduced by the standard 20%, ie £7.93 for 24 weeks. She reclaims benefit 6 months later and a reduced benefit direction is still appropriate. The balance of the direction will be: £7.93 for 2 weeks and £3.96 (10% rate) for the next 52 weeks.

- 5.5.4 A parent who leaves and subsequently reclaims benefit with part of a reduced benefit direction still outstanding will be given a further opportunity to provide the authorisation or information needed or explanations before the reduction resumes. If the period off benefit is less than 1 year, the suspended direction will be revived, if appropriate, after the parent has had two weeks to reflect and make representations. If the period off benefit is a year or longer, the original direction will be terminated and the issue of a new one for the remaining period considered after both the Secretary of State and the Child Support Officer have considered the case. This will be on the same basis as the original decision; the parent will have a period of 6 weeks, and then 2 weeks, to provide the authorisation or information needed or an explanation of why not.
- 5.5.5 Where a parent leaves one benefit to which Section 6 applies before the completion of a reduced benefit direction and subsequently claims a different benefit to which Section 6 also applies, the unexpired portion of the direction will (if still appropriate) apply in relation to the new benefit. If the change

is from Income Support to Family Credit or Disability Working Allowance, the weekly amount outstanding will be adjusted to match the 26 week periods of Family Credit and Disability Working Allowance awards.

Example:

Lone parent leaves Income Support and claims Family Credit when reduced benefit direction in force.

June has been subject to a reduction in Income Support at 20% for 26 weeks and 10% for 4 weeks before leaving Income Support. She claims Family Credit.

Since Family Credit awards run for 26 weeks, the outstanding 48 weeks of the reduced benefit direction will be dealt with as follows:

on next 26 week award reduction of £3.96 imposed; this will leave 22 weeks at £3.96

on following 26 week award, weekly reduction imposed of £3.35 per week, ie $22 \times £3.96$

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5.5.6

It is possible for a parent to receive Family Credit or Disability Working Allowance and Income Support at the same time. Unless special arrangements are made Income Support will compensate for the reduction in Family Credit or Disability Working Allowance. In this circumstance, an additional reduced benefit direction of Income Support will be issued for the remaining period of the Family Credit or Disability Working Allowance direction, so as to ensure that the original direction has effect.

Example

Amount of Family Credit received £25.05 (after reduction of £7.93)

Income Support Assessment:

	£
Adult	39.65
Child	13.60
Family Premium	8.70
Lone Parent Premium	4.45
TOTAL	66.40

RESOURCES	£
<i>Child Benefit</i>	9.25
<i>Family Credit</i>	25.05
TOTAL	34.30

<i>Income Support</i>	32.10
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<i>Reduced Benefit Direction</i>	7.93
<i>Income Support after Reduced Benefit Direction</i>	24.17
<i>Family Credit</i>	25.05
<i>Child Benefit</i>	9.25
RESOURCES POST REDUCED BENEFIT REDUCTION	58.47

This compares with the situation where there was no Family Credit in payment, and the reduction applied only to Income Support:

$$\begin{aligned} & \pounds 66.40 \text{ (Income Support + Child Benefit)} - \pounds 7.93 \\ & = \pounds 58.47 \end{aligned}$$

5.5.7 There will be provision to review a decision to issue a reduced benefit direction. A parent may decide to comply with the requirements of Section 6 where a reduced benefit direction is in force by providing authorisation or providing new information which satisfies the Child Support Officer of the risk to his/her family. If so, the direction and the consequent benefit reduction cease to apply at the next appropriate date according to the benefit concerned (see para 5.4.1). No refund will be made. If, however, the original decision to make a reduced benefit direction was found to have been wrongly made on the evidence available at the time (whether on review or appeal), the reduced benefit direction will be withdrawn and the underpaid benefit will then be paid.

5.5.8 It is possible that there may be cases where a reduced benefit direction is applied but an application is made by the qualifying child (if 12 or over and habitually resident in Scotland). If this enables a maintenance assessment to be completed, the reduced benefit direction will be withdrawn from the next appropriate date according to the benefit in question (see paragraph 5.4.1).

5.5.9

If there is no longer a parent with care or a qualifying child (e.g., the child moves to live with an aunt, leaves school, or marries), Section 6 will no longer be appropriate and the reduced benefit direction will be terminated from the date appropriate to the date there ceases to be a parent with care or a qualifying child. Should a child who has ceased to be a qualifying child become a qualifying child again (eg a child returning to school after a period on the Youth Training Scheme), the question of reviving the remaining period of the reduced benefit direction will be considered in the same way as for a return to benefit.

PART SIX: COLLECTION AND ENFORCEMENT

6.1 INTRODUCTION

- 6.1.1 Under the provisions of the Child Support Act, the Secretary of State may, where he is authorised to do so, arrange for the collection and, if necessary, the enforcement of child support maintenance.

6.1.2 Collection and Payment methods

Part 6.2 below describes the various options available to the Secretary of State in determining: the method by which child support maintenance will be paid; to whom the maintenance will be paid; and the timing of these payments. In general, the method of payment which secures regular payment in the least intrusive way will be preferred, and the wishes of the parties involved will be taken fully into account in making decisions about payment methods. The regulations will allow for representation to be made to the Secretary of State by the parties to a maintenance assessment regarding the method and timing of payments.

6.1.2.1 Deduction from Earnings Orders

One method of collection will be a Deduction from Earnings Order. This is an order that will be served on an absent parent's employer, requiring that a deduction is made from the absent parent's earnings in respect of the maintenance liability. Part 6.3 provides details of these provisions.

6.1.3 Arrears

Should maintenance fall into arrears, the Secretary of State will, at first, look to the absent parent to make voluntary payment of the arrears. There may also be a review of how the payments are made to see if another collection method can be adopted which will prove more effective as a method of securing payments of maintenance.

6.1.4 Interest on arrears

As an incentive to regular payment of maintenance, the Secretary of State will be able to charge interest on outstanding arrears of maintenance. Part 6.4 provides details of these provisions, as well as some further collection procedures where a case has fallen into arrears or an incorrect amount of maintenance has been paid. It also describes the circumstances in which the Secretary of State may retain payments made towards outstanding arrears to off-set against benefits paid by him as a result of the original non-payment.

6.1.5 **Enforcement**

Where a satisfactory arrangement to clear arrears cannot be reached on a voluntary basis, the Secretary of State will be empowered to take action to enforce payment.

6.1.5.1 **Liability orders**

The first step will be to apply to a magistrates' court or a sheriff court for a liability order (see part 6.5). The award of a liability order by the court will establish that payment(s) of maintenance have not been paid, and will authorise the Secretary of State to take action to enforce payment. After a liability order has been obtained, there will be a number of enforcement options available to the Secretary of State. All these options, which are mentioned below, are currently available through application to a court.

6.1.5.2 **Further enforcement**

In England and Wales, enforcement options include distress (see part 6.6), garnishee orders and charging orders. There will be no provisions in regulations regarding garnishee or charging orders as it is not envisaged that procedures will be any different from those required now for maintenance creditors. Applications will be made to a County Court for these orders and, as now, it will be a matter for judicial discretion as to whether the application is granted.

6.1.5.3 A garnishee order is an order, placed on a bank account of a liable person, requiring the release of funds from that account up to the value specified on the liability order. A charging order is an order placed on property owned by the liable person so that should that property be sold, the proceeds of the sale will be released, again up to the value specified on the liability order.

6.1.5.4 In Scotland, enforcement action is tied into existing enforcement procedures, including procedures under the Debtors (Scotland) Act 1987. Action that may be taken includes poinding and warrant sale, arrestment of a bank account, and a Bill of Inhibition (a charge on property). No further provision needs to be made in Child Support regulations, since existing arrangements and Court rules are available to govern these enforcement procedures in Scotland.

6.1.5.5 **Commitment to Prison**

In England, Wales and Scotland, the Secretary of State may seek to have the liable person committed to prison where other methods of enforcement have failed. Regulations regarding the procedure for England and Wales are discussed in part 6.7. In Scotland, the provisions of the Civil Imprisonment (Scotland) Act 1882 will apply.

6.2 METHOD, TIMING AND DISTRIBUTION OF PAYMENT

6.2.1 Provisions of the Child Support Act

Section 29(2) of the Act provides the power for the Secretary of State to make regulations about payments of child support maintenance. Section 29(3) outlines some of the provisions that may be contained in regulations. These include the methods by which, and the frequency at which, maintenance payments will be made. The regulations will provide for a flexible range of payment methods and intervals to cater for the particular circumstances of each individual case. Where voluntary applications are made under Section 4 or Section 7 the Maintenance Application Form will specifically ask the parent with care if he/she wishes the Secretary of State to collect and enforce maintenance payments.

6.2.2 Payments - Absent Parent to Person With Care

It will be possible for payment to be made directly from the absent parent to the person with care following a maintenance assessment. This will involve the least intervention between the two parties, and it is operationally simple. It is the most desirable form of payment and can involve whatever method and whatever intervals are agreeable to both parties. This will be subject to the overriding point that, where the person with care is receiving certain Social Security benefits, the Secretary of State will need to be satisfied that the arrangement is likely to secure regular and reliable payments of maintenance.

6.2.3.1 Payments - Absent Parent to Secretary of State

There will be circumstances where maintenance payments must be paid direct to the Secretary of State by the absent parent. Where the person with care is receiving benefit, this would be similar to the existing procedure in Income Support where the payment of the claimant's own maintenance order (or voluntary agreement) has been diverted (with his/her agreement) to the Department of Social Security. This is normally done when payment is irregular or there is risk of harm. Any maintenance received by the DSS is included with the Income Support paid to the claimant. In effect, the claimant receives a gross amount of Income Support and has a guaranteed weekly income regardless of whether any maintenance is actually paid. It is envisaged that such an arrangement would be authorised by the person with care, although the Child Support Agency would ensure that applicant was aware that such an arrangement was available, where maintenance payments from the absent parent are likely to be irregular or unreliable.

6.2.3.2 It is envisaged that payment of maintenance will be able to be made through the Secretary of State for onward transmission to the person with care - either because it is thought that the maintenance payments need to be monitored, or at the request of the person with care or the absent parent if they do not want

any contact with the other party. In particular, there may be some benefit cases where it is not desirable for payment of Income Support to be made gross. For example, the person with care may prefer, for budgeting purposes, to receive payment of Income Support and maintenance separately.

- 6.2.3.3 Where an application is made under Section 7, it is intended that payment may be made to the applicant if he/she is of an appropriate age, or to the guardian of the applicant.

6.2.4. **Payments to Third Parties**

- 6.2.4.1 Section 29(3)(a)(iii) of the Act refers to the power to direct an absent parent to make payment through any person whom the Secretary of State thinks appropriate. It is intended that this power will be used to allow for circumstances where it is necessary for a third party to collect the payment on behalf of the person with care. Examples of such circumstances are: where a person with care is incapacitated or where it would be more convenient for payment to be made to a partner's bank account; where the person with care does not want any contact with the absent parent, but he/she also does not want the Child Support Agency to collect on his/her behalf.

6.2.5 **Method**

- 6.2.5.1 It is intended that there will be a flexible range of payment methods, with the Secretary of State determining, in the particular circumstances of each case, which is the most appropriate method. The Secretary of State will also take into account any preference expressed by the parties. The methods of payment may include the following:

- * Transcash
- * BACS (standing order, direct debit, automated credits)
- * Bankers Draft
- * Cheques
- * Credit Card
- * Debit card for example, Switch/Connect card
- * Postal Order
- * Cash
- * Sterling Travellers Cheques

* Foreign Currency / Travellers Cheques

* Deduction from earnings order

6.2.5.2 The Secretary of State will also have regard to any existing method of payment, for instance one that has already been ordered by a court.

6.2.6 **Other Payments**

The Secretary of State will determine what should count as a maintenance payment for the purpose of Section 1 (2) and how maintenance payments should be credited in the calculation of assessable income. The following will not count as maintenance:

6.2.6.1 **Gifts**

Gifts made in cash or in kind.

6.2.6.2 **Disposition of Property**

Any payment arising from the disposition of property made in contemplation of, or as a consequence of, a separation, divorce or nullity of marriage. If, for example, the former marital home and its contents are sold, any payment made by the absent parent will not be treated as maintenance although it will count as capital which produces an income.

6.2.6.3 **School Fees**

Payments of school fees. It will be for the courts to make decisions on school fees and these if ordered by a court will be paid by the absent parent over and above his maintenance requirement.

6.2.6.4 **Payment in kind**

Payments in kind. Payment in kind includes such things as clothing, groceries, odd jobs, driving lessons.

6.2.7 **Interval**

There will be powers to collect maintenance from the absent parent on the maintenance date or earlier if convenient to the absent parent. In practice, regard will need to be given to the clearance time for the chosen method of payment. Payments should be available to be paid to the person with care on the maintenance date, i.e. a cheque should be cleared by the maintenance date and therefore received by the creditor 7 days earlier. The Secretary of State will then make payment to the person with care as soon as practicable thereafter. It is intended that collection will take place at regular intervals,

and that arrangements will work as far as possible to the benefit of both the absent parent and person with care.

- 6.2.8 It is proposed that the Secretary of State will be empowered to direct payments to be made, and to make onward payments, at weekly, fortnightly, four-weekly, monthly, quarterly, or annual intervals, or otherwise as may be considered appropriate in particular cases. It will not be necessary for the same interval to be used for payments in (to the Secretary of State) and out (to the person with care); for example, maintenance paid in annually could be paid out at intervals more convenient to the person with care. The person with care and absent parent will be notified of the method and frequency of maintenance payment.

6.2.9 **Requirement to Open a Bank Account**

Section 29 (3)(e)(ii) of the Act refers to the Secretary of State's power to require an absent parent to open a bank or building society or other account from which to make maintenance payments. The person concerned will be required to make reasonable attempts to open an account. The bank or building society will not be obliged to open an account regardless of the status of the person concerned. If a debtor's status is such that the banks and building societies refuse to open an account despite his making reasonable efforts to do so, he will be taken to have fulfilled his obligations. The Secretary of State will then, if necessary, proceed to other collection methods. Where an existing account is held, banks may refuse a standing order or direct debit if they have encountered problems with that account previously.

6.2.10 **Representations**

- 6.2.10.1 The notification referred to in para 6.2.8 above will contain sufficient information to enable the absent parent and the person with care to decide whether they agree on the method and timing of the maintenance payment. It will also inform them that it is open to them to make representations to the Secretary of State if they do not.
- 6.2.10.2 If there is a dispute about methods of payment, the final decision will be for the Secretary of State, although he will take account of representations made about his original decision. It will be possible for the Secretary of State's decision to be reconsidered in cases where information is received which was not previously available or where information previously held was misinterpreted. The Secretary of State will have the authority to insist on payment in some form. It will be made clear that making representations in no way excuses the absent parent from his or her liability under the Act.
- 6.2.10.3 When a method is agreed upon, it will continue until another method of payment is determined by Secretary of State. This will not, however, prevent

the Secretary of State from accepting payment in a different form from that usually in force if circumstances dictate.

6.3 DEDUCTION FROM EARNINGS ORDERS

6.3.1 Provision in the Child Support Act

Section 31 of the Act empowers the Secretary of State to make deduction from earnings orders (DEOs) and describes their broad purpose. Regulations will contain much of the detail and procedures connected with the operation of these orders.

6.3.2 Requirements on the Employer

The regulations will place the following requirements on an employer:

- a) to pay over amounts deducted in respect of child support maintenance by the method and at the time determined by the Secretary of State;
- b) where served with a DEO and the absent parent is not in his employment or subsequently ceases to be in his employment, to notify the Secretary of State of that fact within ten days of the date of service of the order (or, as appropriate, the end of the employment);
- c) if, on becoming the absent parent's employer, he knows that a DEO is in force, to notify the Secretary of State that he is the absent parent's employer. This notification is to be made within seven days of his becoming the employer or acquiring the knowledge, whichever is later. In these circumstances, the employer will also be required to provide a statement of the absent parent's earnings and anticipated earnings;
- d) where the employer makes a deduction from the absent parent's earnings, to inform the absent parent, in writing, of the total deduction made (including any deduction for administrative cost - see 6.3.7 below).

6.3.3 Requirement on an Absent Parent

The absent parent will be required to provide the Secretary of State, on request, with the following information:

- a) the name and address of any person who pays him/her earnings;
- b) details of his/her earnings;

- c) details for the purpose of enabling the absent parent to be identified by his/her employer(s). This may include:
- * the full name and address of the absent parent;
 - * his/her place of work;
 - * the nature of his/her work;
 - * his/her works number, if any.
- d) within seven days of every occasion on which he/she leaves employment or becomes employed or re-employed, details of his/her earnings and anticipated earnings from that employment, and any necessary details about the employer.

6.3.4

Non-Compliance with a Deduction from Earnings order

Non-compliance with a DEO is an offence under Section 32(8) of the Child Support Act. Regulations will specify that this sanction will apply when:

- a) an employer has been served with an order and has not complied with it (except that there is a period of "grace" to cover the first seven days);
- b) an employer does not inform the Secretary of State, within the time limit prescribed, that an absent parent is not in his employment, or has left it;
- c) an employer knows an order is in force but does not inform the Secretary of State within the time limit allowed that the absent parent has entered his employment;
- d) in giving a notice or statement required under the provisions discussed in 6.3.2 above, an employer gives a statement which he knows to be false in a material fact, or recklessly gives a notice or statement, which is false in material fact;
- e) an absent parent fails to meet any of the requirements discussed in 6.3.3; or
- f) in purporting to comply with any of the requirements discussed in 6.3.3, the absent parent makes a statement which he/she knows to be false in material fact, or recklessly makes a statement which is false in material fact.

6.3.5 Definition of Earnings

Regulations will also define "earnings" and "net earnings" for the purpose of Deduction from Earnings orders. Earnings are broadly to be defined as sums payable as wages or salary (including fees, bonus, commission, overtime or other amounts payable under a contract of service), or by way of pension or statutory sick pay. There are a number of excluded payments including, for example, payments to members of Her Majesty's forces, Social Security payments, and disability allowances. Net earnings will be defined as earnings less income tax, national insurance contributions and contributions to superannuation schemes. The regulations will also define "payday" as the day the earnings are paid.

6.3.6 The Amount to be Deducted

6.3.6.1 A deduction from earnings order will specify a "normal deduction rate" and a "protected earnings rate"; both of these figures will appear on the form served on the employer. The normal deduction rate will be based on the amount of maintenance due (although orders will also be used to collect arrears of maintenance or interest outstanding on arrears (see 6.4)). Protected earnings will specify the minimum earnings payable from which a deduction may not be taken. On a given payday, the deduction to be made will be calculated by applying the normal deduction rate to the number of days since the last payday. Protected income will be calculated by similarly applying the protected earnings rate.

Example 1

Normal deduction rate = £35/week

Protected earnings rate = £56/week

First deduction due on first payday after 5/8/91

PAYDAY (DATE)	NORMAL DEDUCTION	PROTECTED EARNINGS
09/08/91	-	-
09/08/91	£35	£56
16/08/91	£35	£56
20/08/91	£20 (£35/7 X 4)	£32 (£56/7 X 4)
23/08/91	£15 (£35/7 X 3)	£24 (£56/7 X 3)
30/08/01	£35	£56

6.3.6.2 If net earnings (see 6.3.5) exceed the protected earnings by at least the level of the required deduction, the full deduction will be made.

Example 2*Normal deduction £50*

<i>Net Earnings</i>	<i>£150</i>
<i>Protected Earnings</i>	<i>£ 60</i>
<i>Remaining Earnings</i>	<i>£ 90</i>

A deduction of £50 is made and the remaining £100 is paid to the absent parent.

6.3.6.3

If, however, the net income exceeds the protected earnings by less than the required deduction, then a deduction will be made which leaves the absent parent with his protected earnings. Any short-fall in the deduction made will be carried forward to be added to the deduction to be made in the next payday.

Example 3*Normal deduction £50**First payday*

<i>Net Earnings</i>	<i>£ 90</i>
<i>Protected Earnings</i>	<i>£ 60</i>
<i>Remaining Earnings</i>	<i>£ 30</i>

A deduction of £30 will be made, the absent parent will receive £60 and £20 short-fall in deduction will be carried forward.

Second payday

<i>Net Earnings</i>	<i>£140</i>
<i>Protected Earnings</i>	<i>£ 60</i>
<i>Remaining Earnings</i>	<i>£ 80</i>

A deduction of £50 + £20 brought forward (total £70) will be made and the absent parent will receive £70. (Had net earnings been £120 and, hence remaining earnings only £60, then £60 would be deducted and £10 carried forward as a short-fall).

- 6.3.6.4 Similarly, where net earnings are less than protected earnings, it is intended that the deficit in protected earnings will be carried forward.

Example 4

Normal deduction £50

First payday

<i>Net Earnings</i>	<i>£ 50</i>
<i>Protected Earnings</i>	<i>£ 60</i>
<i>Remaining Earnings</i>	<i>- £ 10</i>

No deduction will be made. £50 shortfall in deduction carried forward and £10 short-fall in protected earnings carried forward.

Second payday

<i>Net Earnings</i>	<i>£100</i>
<i>Protected Earnings</i>	<i>£ 70*</i>
<i>Remaining Earnings</i>	<i>£ 30</i>

** £60 + £10 brought forward.*

A deduction of £30 will be made, with a £70 short-fall carried forward (£20 from this payday + £50 brought forward from the first payday).

6.3.7 Deduction towards Administrative Costs

An employer will be able to make a deduction as a contribution towards his administrative costs whenever he makes a deduction under a DEO (but not when he calculates the deduction as nil). The amount of this deduction will be the same as that deductible by employers making deductions under the Attachment of Earnings Act 1971 (currently £1 per deduction).

6.3.8 **What a DEO will specify**

Regulations will require a DEO to specify the following information:

- a) that it is a Deduction from Earnings Order and that it is served on the employer in accordance with the provisions of the Child Support Act 1991
- b) that a copy of the order has been served on the relevant employee
- c) the normal deduction rate and protected earnings rate
- d) sufficient information for the employee to be identified by the employer. This may include the full name and address of the absent parent, the place of work, the nature of the work and his/her works number (if appropriate/known).

6.3.9 **Variation, Discharge and Lapse**

- 6.3.9.1 It is intended that an order may be varied where there has been a change in the amount to be collected or a change in the protected earnings level. Where an order is to be varied, the Secretary of State will serve a further order on the employer specifying the new conditions. The employer will be required to comply with a variation order (except that there is no liability for non-compliance before seven days have elapsed from the serving of the order).
- 6.3.9.2 Where no liability for maintenance remains, or when the Secretary of State decides a different method of collection is appropriate, the order will be discharged. The Secretary of State will serve a discharging notice on the employer. The employer will not be liable to suffer any consequences as a result of treating the liability order as still in force until seven days have elapsed from the serving of the discharging notice.
- 6.3.9.3 Where the employer ceases to have the absent parent in his employment, the order will lapse. Where an order has lapsed, it will have no effect until the Secretary of State directs it to a person who he believes has the absent parent in his employment. Where employment ceases both the employer and the absent parent are required to inform the Secretary of State (see 6.3.2 and 6.3.3).
- 6.3.10 **Appeals**
- 6.3.10.1 Where an absent parent is aggrieved by the making of a Deduction from Earnings order, or where there is a dispute as to whether payments constitute earnings, provision will be made for an appeal to a magistrates' court (in

Scotland, a sheriff court). The court which has jurisdiction over the area in which the absent parent lives will have jurisdiction to hear the appeal.

6.3.10.2 Regulations will provide, in England and Wales, for an appeal to be instituted by the absent parent making a complaint to a justice of the peace. The absent parent will request the issue of a summons which is to be directed to the Secretary of State, requiring the Secretary of State to appear before the court. In Scotland, procedures will be determined by rules of court.

6.3.10.3 Where the court is satisfied that the appellant's claims are up-held, the court will, as appropriate, quash the DEO or determine which, if any, of the appellant's earnings fall under the definition of earnings, provided in the regulations.

6.3.10.4 Following an appeal, a DEO will remain in force if the appeal is refused, or be cancelled and remitted to the Secretary of State if the appeal is upheld. A DEO will remain in force pending an appeal hearing.

6.3.11 Crown Employees

Section 57(4) of the Child Support Act will allow the Secretary of State to issue a DEO in relation to liabilities of crown employees. The chief officer of the absent parent's department, office or body will be deemed to be his employer and any earnings will be treated as being paid by the chief officer.

6.4 ARREARS, INCORRECT PAYMENTS AND THE CHARGING OF INTEREST

6.4.1 Provision in the Child Support Act

Section 41 of the Child Support Act 1991 deals with the subject of arrears, the rate of interest, when to charge interest and to whom the interest is payable. Arrears will occur when either no payment, or only a part payment, has been made towards an established maintenance liability.

6.4.2 Offsetting Arrears of Maintenance against Benefit

There will be occasions where benefit is increased to compensate the parent with care when maintenance has not been paid. The Income Support rules already allow for any extra benefit paid because maintenance is not paid at the proper time to be recovered.

Example

The parent with care has a total income of £75.00 which consists of maintenance at £45.00 and income support at £30.00. However, for a period of time the absent parent only pays £35.00 maintenance, therefore, income support is increased to £40.00 to ensure the parent with care keeps their total income of £75.00.

If this carried on for, say, ten weeks the following occurs:

- 1. excess benefit is paid at $£10 \times 10 \text{ weeks} = £100$*
- 2. maintenance is underpaid at $£10 \times 10 \text{ weeks} = £100$*

If the absent parent agrees to pay all the arrears then the parent with care is due £100.00 maintenance arrears. However, since an extra £100.00 has been paid in benefit the arrears of maintenance will be offset against the extra benefit paid.

6.4.3 When to charge Interest

6.4.3.1 Interest may be charged if there is an outstanding debt and no agreement has been made to repay arrears. Interest will be charged in the following circumstances:

- a) at the start of the claim, interest will be charged only where the absent parent has been informed of the amount of his or her liability, but does not make full payments of maintenance thereafter.
- b) where the absent parent has been making payments but full payment subsequently ceases.

6.4.3.2 Interest will be charged in all cases except the following:

- * If a prompt arrangement to repay arrears is made and the absent parent keeps to that arrangement;
- * Where it is absolutely impossible for an arrangement to be made because of the absent parent's incapacity either mental or physical;

- * Where the absent parent is away from home for an extended period and is unaware that arrears are accumulating;
- * If arrears are due to an official error;
- * Where interest is charged on a certain rate of liability which, on review or arrears, is subsequently reduced then interest will only be charged at the new reduced rate throughout;
- * Where it would not be cost effective to pursue a small amount of arrears and charge interest. This is likely to occur only on termination of an assessment.

6.4.4 **Waiving of Interest**

Interest will only be waived where initially it has been charged and should not have been because one of the circumstances in paragraph 6.4.3.2 applies.

6.4.5 **Rate of Interest**

The rate of interest which will be charged will be comparable with those already used for official purposes. Interest will be charged on a daily basis as this is the most accurate way of calculating interest and is fairer to the absent parent.

6.4.6 **Retention of Interest**

- 6.4.6.1 If the parent with care is on benefit then in most cases the Secretary of State will retain the interest. This is appropriate because benefits will have to be increased to compensate for the loss of maintenance in payment and the person with care has been fully compensated for loss of income.
- 6.4.6.2 However, in Family Credit and Disability Working Allowance cases, the parent with care will receive the interest. Where the parent with care is not on benefits then the interest will be payable to him or her.

6.4.7 **Incorrect Payments**

- 6.4.7.1 Section 51(2)(e) and 51(2)(f) of the Child Support Act 1991 allows for the re-adjustment of the maintenance assessment where a retrospective assessment is appropriate, or an overpayment or underpayment has occurred. Examples of when a retrospective assessment may be appropriate, or an incorrect payment may occur include:
- a) where the original assessment was based on ignorance of a material fact;

- b) where an official error has occurred;
- c) where the original assessment was wrong in law;
- d) where there has been misrepresentation by one of the parties.

6.4.7.2 It will be appropriate in these circumstances to make a retrospective adjustment to the maintenance assessment. This may also occur, where, for example, there has been a delay in tracing the absent parent, or following a review or appeal. Either the absent parent or the person with care may benefit financially

6.4.7.3 Where an overpayment or underpayment occurs then the maintenance liability may be decreased or increased respectively, until such time as the under or overpayment is recovered. This may include a number of payments for a period of time, or a one off lump sum payment in addition to the ongoing periodic maintenance.

6.5 LIABILITY ORDERS

6.5.1 Introduction

The main characteristics of a liability order are described in Sections 33 and 34 of the Child Support Act:

- a) The Secretary of State may only apply for an order when it appears to him that a deduction from earnings order is an inappropriate or ineffective method of securing payment.
- b) The Secretary of State will apply to a magistrates' court in England and Wales or to a sheriff court in Scotland.
- c) In making an order, a court is establishing that a payment of maintenance has become due and has not been paid by the absent parent.
- d) The making of an order allows the Secretary of State to commence formal enforcement action to recover the debt.
- e) The court considering the order shall not question the maintenance assessment under which the relevant payment became due.

6.5.2 The following provisions for liability orders for England and Wales will be contained in regulations. The corresponding provisions for Scotland will be in court rules.

6.5.3 Procedure

6.5.3.1 The court with jurisdiction for the area in which the absent parent lives will have jurisdiction to deal with an application for a liability order. An application to that court for a liability order will act as a request for the absent parent to be summoned before the court.

6.5.3.2 Before an amount can be specified on a liability order, the absent parent must have been notified of his or her liability to pay that amount and, after payment is missed, be served with a notice in respect of the amounts that have not been paid.

6.5.4 Contents of a liability order

A liability order will specify:

- a) the name and address of the absent parent;
- b) the date on which the order was made;
- c) the amount of maintenance that has not been paid;
- d) the amount of interest on maintenance that has not been paid (if any);
- e) the costs (or expenses as awarded by the Sheriff in Scotland) of the complainant (ie the Secretary of State);
- f) the aggregate amount in respect of which the order is made;
- g) that the defendant is liable to pay the amount so specified on the order; and
- h) that the amount so specified on the order may be enforced in the manner specified under the Child Support Act 1991.

6.5.5 Enforcement throughout the United Kingdom

Regulations under Section 39 of the Act will provide for orders made in England, Wales or Northern Ireland to be enforceable in Scotland and, similarly, orders made in Scotland or Northern Ireland to be enforceable in England and Wales.

6.6 DISTRESS

6.6.1 Introduction

Section 35 of the Child Support Act allows the enforcement of an amount specified on a liability order to be done, in England and Wales, by distress and sale of goods. Regulations will supplement the provisions in the Act. For Scotland, the provisions of the Debtors (Scotland) Act 1987 and court rules and procedures made under that Act will govern the use of the Scottish diligence of poinding and warrant sale.

6.6.2 Validity of distress proceedings

The regulations will provide that:

- a) a distress may be made anywhere in England and Wales;
- b) a distress will not be deemed unlawful on account of any defect or want of form in the liability order being enforced.

6.6.3 Authorisation and Notification

The following authority/notifications will be required:

- a) the person levying distress will carry the written authority of the Secretary of State (which he will show to the absent parent if he is asked to do so);
- b) the person levying distress will hand to the absent parent, or leave at the address where distress is levied, a copy of Section 35 of the Child Support Act and of the regulations made under that section, together with a memorandum setting out the amount to be levied.

6.6.4 Payment of amounts due

If the appropriate amount due (including any amount due in respect of charges arising up to the time of payment) is paid or tendered to the Secretary of State:

- a) before goods are seized, the Secretary of State will accept the payment and distress action will not be proceeded with;
- b) after the seizure of goods but before their sale, the Secretary of State will accept payment and not proceed with the sale. The goods will be made available for collection by the absent parent.

6.6.5 **Appeals**

6.6.5.1 Regulations will allow a person aggrieved by the levy, or an attempt to levy, distress to appeal to a magistrates' court. The appeal will be instituted by making a complaint to a justice of the peace and requesting the issue of a summons directed at the Secretary of State to appear before the court.

6.6.5.2 If the court is satisfied that a distress was irregular it may:

- a) order the goods distrained to be discharged, if they are in the possession of the Secretary of State;
- b) award compensation in respect of goods sold equal to the amount which, in the opinion of the court, would be awarded by way of special damages if the proceedings were brought in trespass.

6.6.5.3 If the court is satisfied that an attempted distress is irregular, it may require the Secretary of State to desist from levying in the manner causing the irregularity.

6.6.5.4 The jurisdiction to act under an appeal will be with the justices of the peace for the commission area within which the appellant lives.

6.6.6 **Charges**

It will be possible for charges to be levied along with the amount specified on the liability order. It is proposed that, for England and Wales, the charges should follow existing models and should cover the principal elements of the levying of the distress, including visiting premises, removing and storing goods for sale, and for the expenses of the sale itself. Fees for Sheriff Officers in Scotland for executing the diligence of poinding are set out in Court of Session Act of Sederunt.

6.7 COMMITMENT TO PRISON

6.7.1 Background

6.7.1.1 Under Section 40 of the Child Support Act, the Secretary of State may, as a last resort, ask for a warrant committing an absent parent to prison. Imprisonment for maintenance debt is a sanction already provided for under existing maintenance legislation. The regulations apply only to England and Wales. For Scotland, the existing procedures and arrangements under the Civil Imprisonment (Scotland) Act 1882 will apply to default in paying child support under this Act in a similar manner as that in which it applies to failure to pay aliment at present.

6.7.1.2 The power to commit an absent parent to prison is a **discretionary**, not obligatory power. It can follow only if after attempts to recover the amount by distress, or by way of garnishee proceedings or charging order (see part 6.1), an amount or any part of it remains unpaid. In these circumstances the Secretary of State may apply to the court for the issue of a warrant to commit the absent parent to prison. The court may postpone the issue of the warrant until such time and on such conditions as it thinks just. This may then allow the absent parent time to make payment of the amount outstanding before the warrant to commit is executed. Execution of the warrant may result in the absent parent being committed to prison for a period not exceeding six weeks.

6.7.1.3 It is intended that the action will take place in the court having jurisdiction over the area in which the liable person to whom the application applies normally resides.

6.7.2 Amount of the Warrant

The amount of the warrant is calculated as the aggregate of:-

- a) the amount on a liability order or such an amount as remains outstanding (The figure produced by the maintenance assessment cannot be questioned by the court); and
- b) an amount equal to the costs reasonably incurred by the Secretary of State in respect of the costs of the application for the warrant.

6.7.3 Reduction in the Term of Imprisonment

If, after the issue of a warrant or a period of imprisonment has been fixed but the issue of the warrant has been postponed, the absent parent then pays part of the outstanding debt, the period of imprisonment may be reduced. The reduction will be in the same proportion to the total sentence as the amount of part payment is to the total amount on the warrant. In the calculation of this

reduction any fraction of a day will be disregarded. The calculation of the number of days follows existing legislation in that it is "less one day"; this is a practical necessity to allow prison establishments time to organise the release of a debtor. The reduction in the total period will be in the same proportion as the amount of the part payment is in, in relation to the total amount on the warrant, ie, if half the amount on the warrant is paid, the period of imprisonment may be reduced by half.

6.7.4 **Form of the Warrant**

The warrant will have a similar form to that laid out opposite.

6.7.5 **Renewal of an Application**

Applications to commit an absent parent to prison will be renewable where no warrant has been issued and no term of imprisonment fixed. This will be possible on the grounds that, after a refusal by the court to issue a warrant, there has been a change in the absent parent's circumstances.

6.7.6 **Evidence of Wages Paid**

Court rules will determine what is acceptable evidence of wages paid.

6.7.7 **Inquiry into a Liable Person's Conduct and Means: Issue of a Summons and Warrant for Arrest**

It will be necessary for the court, in taking action to commit an absent parent to prison, to enquire as to his/her means and as to whether refusal to pay has been due to wilful refusal or culpable neglect. In order that an inquiry can take place a justice of the peace will be able to issue a summons for an absent parent to appear in court, and, if the absent parent does not appear, to issue a warrant for his or her arrest. In addition, a justice of the peace will, in the course of inquiry into the absent parent's means and the reasons for his/her refusal to pay, be able to issue a warrant for arrest without having issued a summons.

6.7.8 **Execution of a Warrant for Arrest**

The execution of a warrant for the arrest of the absent parent will be possible anywhere in England and Wales by the person to whom it is directed or by a constable acting in his police area. The warrant may also be executed by a constable when it is not in his possession, although, on his request, the warrant should be shown to the person who has been arrested as soon as is practicable.

WARRANT OF COMMITMENT
Regulation [] of the Child Support Regulations
.....Magistrates' Court

Date:
Liable Person:
Address:

A liability order, ("the order") was made in respect of the liable person by the []
Magistrates' Court under regulation [] of the Child Support Regulations ("the Regulations").

The court is of the opinion:

- that the Secretary of State has sought to levy an amount by distress or by virtue of
Section 36 and that amount, or any portion of it, remains unpaid.

- that the court has, in the presence of the liable person, inquired as to the liable
person's means and whether there has been wilful refusal or culpable neglect on the part
of the liable person.

"The court is of the opinion that there has been wilful refusal or culpable neglect on the part
of the liable person".

The decision of the court is that the liable person be [committed to prison] [detained] for []
[] unless the aggregate amount mentioned below in respect of which this warrant is made
is sooner paid.*

This warrant is made in respect of-

Amount outstanding in respect of which distress was sought:

Costs of commitment to the Secretary of State:

Aggregate amount:

And you [(name of the person or persons to whom the warrant is directed)] are hereby
required to take the liable person and convey him to [(name of prison or place of detention)]
and there deliver the liable person to the [governor][officer in charge] thereof; and you the
[governor][officer in charge], to receive the liable person into your custody and keep the
liable person for [(period of imprisonment)] from the liable persons arrest under this warrant
or until the liable person be sooner discharged in due course of the law.

Justice of the Peace
[or by order of the Court]

Clerk of the Court].

*Note: The period of imprisonment will be reduced as provided by regulation [] of the
Regulations if part payment is made of the aggregate amount.

6.8 **COLLECTION AND ENFORCEMENT OF OTHER FORMS OF MAINTENANCE**

Section 30 of the Child Support Act empowers the Secretary of State to make regulations by which it will be possible for the Child Support Agency to collect and enforce other forms of maintenance which will remain for the courts to determine. The timing of when the Child Support Agency will take on this additional work has not yet been decided. The provision that could be made in regulations would include:-

- a) where child support maintenance is being collected the Child Support Agency will be able to collect spousal maintenance, and maintenance for non-qualifying children, maintenance for school fees, for top-up awards above the upper limit of the formula, maintenance for disabled children;
- b) the Child Support Agency could take over the jurisdiction of the courts in England and Wales for consent orders, by being able to register child maintenance agreements as though they were assessments (and any related agreement about spousal maintenance or other child maintenance) without recourse to a formula calculation. It has yet to be decided whether this should be done at the outset, or whether the courts powers to make consent orders should be preserved for a time by regulations under Section 8(5);
- c) in Scotland, where there is a minute of agreement registered for enforcement, the Child Support Agency will be able to collect and enforce any related agreement for spousal maintenance or for a non-qualifying child;
- d) where there is a court order for child maintenance, even though there may not be child support maintenance at issue, the Child Support Agency will be able to collect that order for child maintenance and any related spousal maintenance.

PART SEVEN: FEES

7.1 INTRODUCTION

7.1.1 Provisions Already Made

Section 47 of the Child Support Act 1991 contains the power for the making of regulations to provide for the payment of fees by an absent parent, a person with care of the child, or child applicants for maintenance in Scotland. This section also allows the Secretary of State to make provision for the recovery of fees payable under the regulations. And it obliges the Secretary of State to exempt from paying fees any person who is in receipt of Income Support, Family Credit or any other prescribed benefit.

7.1.2 Policy Background and Intention

Child maintenance is, essentially, a debt owed by one party to another. If, where there is no public interest, it is possible for them to come to a satisfactory and effective private agreement, then that is to be encouraged. The Child Support Agency's services will, of course, be available to all, but where persons with care and absent parents are financially able to meet the costs of involving the Child Support Agency in questions about child maintenance, then it is right that they should do so rather than pass on the whole cost to the taxpayer.

7.2 CHARGING OF FEES

7.2.1 The regulations will set out the fees which may be charged in specific circumstances. The services for which fees will be charged will be:

- a) A one-off maintenance calculation to determine the amount of maintenance due at the time of making the calculation. This provides a facility for customers, for example, who want to know what their liability would be but then wish to make private arrangements for payment.
- b) An assessment service which includes the initial assessment and any review action (including, for example, reviews on changes in the circumstances of the absent parent or the person with care) up to the date one year from the date of the application.
- c) A collection service where the Child Support Agency is asked to collect maintenance and forward the payment to the person with care of the child. This service will also include management of any arrears of maintenance which may arise, and the enforcement of payment where payment arrangements have broken down. The intention is to

provide a service which will offer speedy action to deal with default in payment of maintenance. This collection service will be offered for one year from the date of application.

The assessment and collection services will be offered on an annual cycle.

7.2.2 Calculating the level of fees

The principle is that the fees will recover the full economic cost of the services being provided. The intention is that standard level fees will be set for each of the proposed services. This will enable the scale of fees to be published so that the customer is able to make an informed choice about the use of the service and its cost. Further work has still to be done to calculate the precise levels of fees, but at this stage, it is estimated that each individual will pay in the region of £20-£35 per year, at current prices, for each of the individual services.

7.2.3 Exemptions

Fees will not be paid by parties who are receiving Income Support, Family Credit or Disability Working Allowance.

7.2.4 Other charges

The regulations will provide for exceptional costs to be levied on an incurred basis. The intention here is to allow for a unique, but significant cost to be recovered from an individual customer in circumstances where the costs were wholly outside the normal range.

7.3 PAYMENT OF THE FEES

7.3.1 The fees will be split between among the absent parent(s) and the person with care, or the child concerned where the Secretary of State took action under Section 7. The intention is that the cost of the service will be split equally between both parties, but either one or both parties may be exempt from paying their share on the grounds mentioned in paragraph 7.2.3.

7.3.2 In some circumstances, those using the Child Support Agency may find it difficult to pay the fee all at once, and it is intended that arrangements will be available, if required, for payments to be made in instalments.

PART EIGHT: JURISDICTION

8.1 INTRODUCTION

The question of whether the Child Support Agency or the courts have jurisdiction in a case depends on a number of different factors, for example: geographical jurisdiction, the meaning of a person with care, and the definition of a child. Furthermore, jurisdiction, particularly geographical jurisdiction, may change during the lifetime of a case, necessitating a transfer between the courts and the Agency. The relevant regulation making powers are contained in Sections 10(1), 10(2), 10(3), 10(4), 10(5) and 44(3) of the Child Support Act.

8.2 GEOGRAPHICAL JURISDICTION

Section 44 confines the jurisdiction of Child Support Officers in making maintenance assessments to cases where the person with care, absent parent and qualifying child/children are all habitually resident in the United Kingdom. If any one of the parties is not habitually resident then the Child Support Officer cannot make an assessment and will issue a decision to this effect. There will be a right of appeal against this decision.

8.2.1 Habitual Residence

The concept "habitual residence" is referred to in existing law, but is not precisely defined. The concept may denote a regular, physical presence lasting for some time, so that a temporary absence is immaterial. However, a number of other factors concerned with a person's personal or professional circumstances may also be relevant. It will be for the Child Support Officer to decide, using existing case law, whether a party to the maintenance assessment can be regarded as habitually resident. In most cases there will be no question as to whether a person is habitually resident or not. Only in cases of doubt will interpretation become an issue.

8.2.2 Caring institutions

The situation may arise where there is no identifiable "person" with care, for example where the child is being cared for in an institution or organisation whether in the voluntary or private sector. It is difficult to apply the habitual residence test to an institution or organisation and it is intended to waive the need for the "person with care" to be habitually resident in these circumstances.

8.3 INTERFACE WITH THE COURTS

- 8.3.1 If the Child Support Officer issues a decision that he cannot make a maintenance assessment, for example because a party to the maintenance assessment is not habitually resident in the United Kingdom, the parties will be referred to the courts. Where a maintenance assessment is in force, but the Child Support Officer learns that the parties are no longer in the geographical jurisdiction of the Child Support Agency, regulations will provide for the cancellation of the assessment. Similarly, a child support maintenance assessment will be cancelled if a court has jurisdiction and makes a maintenance order for the same child/children.
- 8.3.2 Where a court order for maintenance is made but a child support maintenance order is in existence, it is intended that the court should notify the Child Support Agency so that the assessment can be cancelled. Similarly, where a child support maintenance assessment is made but there is a court order in force for the same child, the Child Support Officer will notify the court that he has made an assessment.
- 8.3.3 The regulations will include provisions using the powers under Section 10 for court orders to cease to have effect to such extent as is prescribed. The regulations will allow for a court order which also has a spousal element, or an element for a non-qualifying child, or an additional element for a qualifying child (for example, for school fees, for top-up awards above the upper level of the formula, or for disabled children). These can then be varied in the light of a child support maintenance assessment. The regulations will make similar provisions in relation to maintenance agreements.

8.4 ARREARS

Provision will be made for the situation where a court order or a Child Support Agency assessment falls into arrears, and because, for example, of a change in the habitual residence of one or more of the parties, the case switches to the jurisdiction of the other body. If the arrears accrue under a court order then the arrears can be recovered by going to court. If the arrears accrue under a Child Support Agency assessment, they can be recovered by going to the Agency.

8.5 DISPUTES OVER JURISDICTION

It is possible that in some cases there will be a difference of view between the courts and the Child Support Agency. Both may regard themselves as having, or not having, jurisdiction to deal with a particular application for maintenance. Since decisions of the courts are judicial decisions it will not be possible for such a decision to be reviewed without a further hearing. Decisions of Child Support Officers, however, may be reviewed by the usual administrative process before an appeal is lodged.

8.6 COURT RULES

- 8.6.1 A number of procedural changes resulting from the Act need to be prescribed in Rules of court both for England and Wales and for Scotland. Consultation on these Rules will proceed through the usual mechanisms.
- 8.6.2 For example, Rules of court need to be made in order for courts to be able to ascertain whether a maintenance assessment is in force where an application for a court order is made.

8.7 PERSON WITH CARE: EXCLUDED CATEGORIES OF PERSONS

- 8.7.1 It is the intention that in general it should be possible to seek a maintenance assessment under the Child Support Act in any case where the payment of maintenance by a parent for his or her child is an issue. Applications can be made by the person with care of the children concerned, the absent parent and, in the case of children aged 12 and over in Scotland, by the child him or herself.
- 8.7.2 A person with care is defined in Section 3(3) of the Child Support Act as someone with whom the child has his or her home, who usually provides day-to-day care for the child and who is not excluded by prescription under Section 3(3)(c). Certain categories cannot be excluded - parents, guardians, someone with a residence order under the Children Act and, in Scotland, someone with the right to custody of the child.
- 8.7.3. It is proposed to exclude local authorities and anyone with whom a local authority has placed a child they are looking after. They will not be able to apply for a maintenance assessment but local authorities will be able to use powers under the Children Act 1989 (and in Scotland, the Social Work (Scotland) Act 1968) to seek a contribution from the parents of children whom they are looking after, whether or not the child is subsequently placed in the care of an individual, a voluntary organisation, or a private organisation.

8.8 MEANING OF "CHILD"

Children come within the bounds of the Child Support Act 1991 if they fall under the definition of "child" contained in Section 55 of the Act. Within this section are regulation making powers, 55(1cii), (3), (5), (6), (7)), allowing for the further definition of:

- a) the circumstances in which a person who has ceased to receive full-time education is to be treated as a child;
- b) "advanced education";

- c) the circumstances in which education is, or is not, to be treated as full-time;
- d) interruptions of full-time education;
- e) circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child.

The contents of the above will largely mirror the existing provisions of the Child Benefit (General) Regulations 1976 1(2), 5(1)(2), 6(1) (2), and 7.

8.9 APPLICATION OF THE CHILD SUPPORT ACT TO THE ARMED FORCES

- 8.9.1 It is intended that orders made under the Child Support Act 1991 will have the same application to the Armed Forces as maintenance orders made by the courts do now. However there will be differences because of the special historical considerations for the Armed Forces which are enshrined in existing Armed Forces legislation. Effect will be given to this intention by means of consequential amendments to the relevant legislation.
- 8.9.2 It will not be possible for a Deductions from Earnings Order to be made against a member of the Armed Forces, as it is not possible now for attachment of earnings orders for maintenance to be applied to the Armed Forces under the Attachment of Earnings Act 1971. But the existing powers which Commanding Officers have to make compulsory deductions from the pay of servicemen and women and to arrange for payment of maintenance will be available for liability determined by a child support maintenance assessment.
- 8.9.3 In addition, there is provision in existing legislation which operates so that the pay of a serviceman may not fall below a certain percentage of pay. This may mean that in some circumstances the provision about minimum pay may override protected income, and that the full liability may not be recovered from the serviceman's service pay. But it would be open for the Child Support Agency to seek to recover through separate enforcement action the remaining liability from any other resources which the serviceman might have.

PART NINE: TRANSITIONAL ISSUES

9.1 INTRODUCTION

9.1.1 The primary purpose of this document has been to offer an early opportunity for consideration on the detail of the procedures of the Child Support scheme once it is fully operational. It will, however, also be necessary to make a number of provisions to ensure that the process of moving towards full operation is managed as smoothly and fairly as possible. One such provision, relating to phasing in formula assessments, is discussed below.

9.1.2 When fully established the Child Support Agency will have approximately two million customers and process 3 million assessments each year. Take-on of this large workload will be carefully phased over a period of years so that the Agency will eventually take on all cases subject to the Child Support Act. During the transitional phase cases not yet subject to the Child Support Act will remain with the courts. The Government is considering the best way of managing this process in the light of detailed operational planning, and proposals will be produced as soon as this planning has been completed.

9.2 PHASING IN THE FORMULA

9.2.1 The calculation, under the formula, of assessments of child support maintenance will, for the majority of cases, result in increasing the amount of money payable by an absent parent towards the upkeep of his children. Whilst an assessment calculated under the formula does reflect an absent parent's ability to pay, it is recognised that for a number of cases - who may have settled into financial arrangements based on a pre-formula lower maintenance award - a dramatic and abrupt increase in the amounts payable could cause difficulties of financial management. To mitigate these difficulties, it is intended that in such cases the formula should be phased in; increasing the amounts payable by annual steps, ultimately to the level of the formula award.

9.2.2 Selecting the type of case that will qualify for phasing is a question of striking the right balance between the competing needs of the absent parent and the needs of the person with care and their dependents. It was concluded that absent parents who had a court order making provision for their children but had subsequently established a second family - with the responsibility for the upkeep of children within this family - merited mitigation by phasing in a formula award. In these cases both families would have become used to a division of the absent parent's income. Too abrupt an increase in payments of maintenance to the first family could result in financial problems for the second family.

- 9.2.3 Some absent parents who qualify under the above criteria would, however, experience comparatively little financial difficulty in adjusting to a formula award immediately. In this situation it does not seem to be reasonable or fair to deny the person with care the full amount of maintenance by phasing the award. To strike the right balance between the needs of the first family and those of the second, absent parents with comparatively high earnings will not qualify for phasing. High awards of maintenance under the formula reflect above average earnings for the absent parent. It is proposed that maintenance awards under the formula above a certain weekly amount should not qualify for phasing. Setting the level at £60 per week will balance fairly the needs of the person with care and the needs of the absent parent.
- 9.2.4 Setting the size of the steps is also crucial if the needs of both parties to a formula assessment are to be accommodated. The steps must neither be too large to be ineffective as a phasing instrument nor too small - because setting too small a step would discriminate against the needs of the person with care and the absent parent's children in that family. A step of £15 will achieve the right balance. A step set at £15 represents approximately half the average increase in the size of formula awards as compared to awards under court orders (the average amount of maintenance awarded under a court order is £16, under the formula £45). A £15 step represents a steady progression in payments toward the level of the full formula award.

APPENDIX A

GLOSSARY OF TERMS

ABSENT PARENT: A parent who does not live in the same household as the child(ren) he or she is liable to maintain

ASSESSABLE INCOME: Net income minus exempt income. It is the income from which the ability to pay maintenance is calculated and from which maintenance will be paid.

ASSESSMENT: The child support maintenance payable by the absent parent calculated by the formula set out in the Child Support Act.

CHILD SUPPORT AGENCY: An executive Agency, responsible to the Secretary of State for Social Security, which is due to be set up in Spring 1993 and which will be responsible for assessing, reviewing, collecting and enforcing maintenance payments.

CHILD SUPPORT MAINTENANCE: Periodical payments of maintenance for children which meet the obligation imposed by the Child Support Act.

CHILD SUPPORT OFFICER: An officer who assesses, reviews and cancels child support maintenance assessments.

DEDUCTION FROM EARNINGS ORDER: Order made under the Child Support Act to an employer to deduct payments of child support maintenance from the earnings of an employee.

DEDUCTION RATE: This will be a percentage figure to be applied to "assessable income" to determine the amount of maintenance to be paid.

DE MINIMIS LEVEL: The level which defines whether a change in the amount of maintenance payable due to a change in circumstance is significant enough to enable a Section 17 review (Change of Circumstances) and a fresh assessment.

EFFECTIVE DATE: The date from which a maintenance assessment runs.

EXEMPT INCOME: This represents the weekly amount which parents will be deemed to need for their own essential living expenses. It will be based on allowances in the Income Support scheme and will include reasonable housing costs and the costs of any other children for whom they are liable.

MAINTENANCE DATE: The date on which maintenance is due at a particular rate.

MAINTENANCE REQUIREMENT: this is the minimum amount which all parents will be required to contribute to the maintenance of their children if they can afford to; it represents the weekly cost of maintaining each child based on allowances in the Income Support scheme (the current rates are set out in Appendix B).

NATURAL CHILD: The biological child of a relationship or a legally adopted child.

NET INCOME: Income after tax and national insurance contributions and fifty per cent of any contributions to an occupational or personal scheme have been paid.

NON-DEPENDANT: A person who normally lives with the parent, other than a partner or dependant child of his or of his partner.

PERSON WITH CARE: The person who lives with the child(ren) and who has the day to day care of the child(ren), normally, but not always, a parent.

PROTECTED LEVEL OF INCOME: This is the income level which no person liable to maintain a child will be allowed to fall below as a result of meeting his (or her) essential living expenses and maintenance obligations. It will ensure that no-one who is working and/or has other sources of income will be left with an income less than Income Support levels.

QUALIFYING CHILD: A child for whom payments of Child Support maintenance are due under the Child Support Act. The child must be habitually resident in the United Kingdom and have an absent parent and come within the definition of "child".

SECTION 4 APPLICANT: A person with care or absent parent who makes a voluntary application for a maintenance assessment to the Secretary of State.

SECTION 6 APPLICANT: A parent with care who is claiming or included in a claim for Income Support, Family Credit or Disability Working Allowance and is required to make an application for maintenance assessment from the Child Support Agency.

SECTION 7 APPLICANT: A qualifying child in Scotland aged 12 or over who applies for a maintenance assessment from the Child Support Agency.

SECTION 16 REVIEW: A periodic, normally an annual, review of a maintenance assessment.

SECTION 17 REVIEW: A review of a maintenance assessment because of a change of circumstances requested by the person with care, absent parent or child applicant in Scotland.

SECTION 18 REVIEW: A review of a Child Support Officer's decision at the request of the person with care, absent parent or the child applicant in Scotland.

SECTION 19 REVIEW: A review at the instigation of a Child Support Officer where a review would be carried out under Section 17 or 18 if an application were to be made.

SPOUSAL MAINTENANCE: Financial provision between spouses made on family breakdown (including divorce).

INCOME SUPPORT ALLOWANCES AND PREMIUMS: OCTOBER 1991 RATES**Introduction**

The personal allowance is the basic element of the Income Support payment and is intended to cover all normal living expenses. Premiums are additions to Income Support allowances for groups of people with extra needs. Normally, a person who qualifies for more than one premium will only get the one that gives them the most money. However, a person entitled to the family, disabled child, severe disability or carer premium can get them as well as any other premiums they qualify for.

Weekly Personal Allowances**Single People****October 1991**

18-24 years old	£31.15
18 years and over bring up a child	£39.65
25 years old and over	£39.65

Couples

both under 18	£47.30
with at least one of the couple 18 or over	£62.25

And for each child

under 11	£13.60
11 to 15 years old	£20.00
16 to 17 years old, doing a full time course not above A level, Scottish Certificate of Education (Higher Grade) or equivalent	£23.90
18 years old, doing a full time course not above A level, Scottish Certificate of Education (Higher Grade) or equivalent	£31.40

Weekly Premiums

Premiums for people with children

Family Premium

for people with at least one child £8.70

Disabled Child Premium

for people with a child who is getting Attendance Allowance or Mobility Allowance or who is registered blind £16.65

Lone Parent Premium

for people bringing up one or more children on their own £4.45

Premiums for long term sick or disabled people

Disability Premium

for people getting Invalidity Benefit, Severe Disablement Allowance, Mobility Allowance, Attendance Allowance, registered blind or who are sick and cannot work and have been sending doctor's statements for at least 28 weeks

Single Person	£16.65
Couple	£23.90

Severe Disability Premium

for people getting Attendance Allowance and living alone and no-one gets Invalid Care Allowance for looking after them.

Single person £31.25

Couple, both partners get Attendance Allowance but someone gets Invalid Care Allowance for looking after them £31.25

Couple, both partners get Attendance Allowance, no-one gets Invalid Care Allowance for looking after either of them £62.50

Premiums for Carers

Carer Premium

for people getting Invalid Care Allowance

Single person	£10.80
Couple	£10.80
(for each person on Invalid Care Allowance)	

There are also premiums for people aged 60 or over.

Help with Housing and Community Charge Costs

Income Support can include money to help people to meet interest charges on a mortgage or home loan.

Housing Benefit provides help with housing costs for people on low incomes who live in rented accommodation, hostels, hotels or guest houses.

Help towards paying the Community Charge is available from Community Charge Benefit, paid by local councils. This can amount to 80 per cent of the community charge for people who are receiving Income Support or who have similar incomes.